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Presidential Documents

Title 3—

The President

Proclamation 9497 of September 16, 2016

Constitution Day and Citizenship Day, Constitution Week, 2016

By the President of the United States of America

A Proclamation

Tasked with the awesome responsibility of building a Government to endure for generations to come, a band of dedicated patriots gathered in Philadelphia in 1787, seeking to build a more stable and permanent framework for a nascent democracy. Passionate debates and intense negotiation gave way to lasting compromise, and a document emerged that became the bedrock of America. Signed on September 17, the Constitution of the United States has steered our country through ever-changing times. It guides us as leaders on the world stage and safeguards the fundamental rights of our citizens. And it guarantees that the greatness of our Nation never depends on any one person—it requires the full and active participation of an engaged and vibrant citizenry.

The vision of self-government laid out in our Constitution is dependent on Americans doing the hard and sometimes frustrating—yet always essential—work of citizenship. Being a citizen is a responsibility that challenges each of us to stay informed, to speak out when something is not right or not just, and to come together to shape the course our country will take. Citizenship is a commitment, calling on us to stand up for what we believe in and to exercise our rights to protect the rights of others. The Bill of Rights and other amendments added in the decades that followed have paved the way for progress, and they embody a truth held since our founding: the simple but powerful idea that people who love their country can change it for the better.

America is more than a piece of land—it is an idea, a place where we can contribute our talents, fulfill our ambitions, and be part of something bigger than ourselves. Each year on Citizenship Day, we celebrate our newest citizens who raise their hands and swear a sacred oath to join our American family. The journey they have taken reminds us that immigration is our origin story. For centuries, immigrants have brought diverse beliefs, cultures, languages, and traditions to our country, and they have pledged to uphold the ideals expressed in our founding documents. They come from all around the world, mustering faith that in America, they can build a better life and give their children something more. That is why I was proud to create the White House Task Force on New Americans, which is helping to build welcoming communities around our country and enhance civic, economic, and linguistic integration for immigrants and refugees. Through the Task Force, Federal agencies and local communities are working together to raise awareness about the rights, responsibilities, and opportunities of citizenship—and to give immigrants and refugees the tools they need to succeed.

As a Nation of immigrants, our legacy is rooted in their success. Their contributions help us live up to our founding principles. With pride in our diverse heritage and in our common creed, we affirm our dedication to the values enshrined in our Constitution. We, the people, must forever breathe life into the words of this precious document, and together ensure that its principles endure for generations to come.

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as "Constitution Day and Citizenship Day," and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as "Constitution Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 17, 2016, as Constitution Day and Citizenship Day, and September 17 through September 23, 2016, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that bring together community members to reflect on the importance of active citizenship, recognize the enduring strength of our Constitution, and reaffirm our commitment to the rights and obligations of citizenship in this great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–22951
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Presidential Documents

Proclamation 9498 of September 16, 2016

National Farm Safety and Health Week, 2016

By the President of the United States of America

A Proclamation

For generations, farmers and ranchers have formed the backbone of our economy and shaped the course of our Nation. They have served as critical stewards of our environment and natural resources. Toiling day in and day out in rural communities across our country, their dedication and dogged work ethic provide us with food, fuel, and other necessities, sustaining our people and our communities. Throughout National Farm Safety and Health Week, we honor their significant contributions by reaffirming our commitment to bolstering programs and practices that promote health and safety on America's farms.

Millions of farmers and their families face a variety of unsafe conditions when they wake up for work each morning. Extreme weather, and exposure to livestock or hazardous chemicals can pose threats to their safety. Much of their work takes place in dangerous environments and with potentially harmful equipment, such as wells, silos, and grain bins. And putting in long hours of physical labor can also cause illness or injury. Our farmers and ranchers are exposed to too many of these dangers, and we must ensure they are equipped with the tools, trainings, and resources they need to take proper precautions and safety measures in their workplaces.

To reduce work-related accidents and deaths among farming communities, my Administration has encouraged regular participation in health and safety programs. Increasing awareness of proper procedures is crucial, and farmers and farmworkers can improve their safety practices by correctly handling materials and inspecting machinery, paying careful attention to instructions and labels on products and equipment, and practicing and communicating plans for emergency response. Because many farms and ranches are family businesses, we have partnered with people across our country to help formalize youth farm safety education to improve farm safety for children.

The best farmers in the world have enriched our Nation and driven our agriculture sector forward; it is our shared duty to ensure their health and safety, because we all have a stake in the well-being of those who provide us with food and energy. By maintaining safe work environments and taking steps to practice caution on our farms, we can minimize risks and increase productivity in one of the greatest and most essential industries in America.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 18 through September 24, 2016, as National Farm Safety and Health Week. I call upon the agencies, organizations, businesses, and extension services that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge Americans to honor our agricultural heritage and express appreciation to our farmers, ranchers, and farmworkers for their contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand sixteen, and of the

Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–22959
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Presidential Documents

Proclamation 9499 of September 16, 2016

Prescription Opioid and Heroin Epidemic Awareness Week, 2016

By the President of the United States of America

A Proclamation

Each year, more Americans die from drug overdoses than in traffic accidents, and more than three out of five of these deaths involve an opioid. Since 1999, the number of overdose deaths involving opioids, including prescription opioid pain relievers, heroin, and fentanyl, has nearly quadrupled. Many people who die from an overdose struggle with an opioid use disorder or other substance use disorder, and unfortunately misconceptions surrounding these disorders have contributed to harmful stigmas that prevent individuals from seeking evidence-based treatment. During Prescription Opioid and Heroin Epidemic Awareness Week, we pause to remember all those we have lost to opioid use disorder, we stand with the courageous individuals in recovery, and we recognize the importance of raising awareness of this epidemic.

Opioid use disorder, or addiction to prescription opioids or heroin, is a disease that touches too many of our communities—big and small, urban and rural—and devastates families, all while straining the capacity of law enforcement and the health care system. States and localities across our country, in collaboration with Federal and national partners, are working together to address this issue through innovative partnerships between public safety and public health professionals. The Federal Government is bolstering efforts to expand treatment and opioid abuse prevention activities, and we are working alongside law enforcement to help get more people into treatment instead of jail.

My Administration is steadfast in its commitment to reduce overdose deaths and get more Americans the help they need. That is why I continue to call on the Congress to provide $1.1 billion to expand access to treatment services for opioid use disorder. These new investments would build on the steps we have already taken to expand overdose prevention strategies, and increase access to naloxone—the overdose reversal drug that first responders and community members are using to save lives. We are also working to improve opioid prescribing practices and support targeted enforcement activities. Although Federal agencies will continue using all available tools to address opioid use disorder and overdose, the Congress must act quickly to help more individuals get the treatment they need—because the longer we go without congressional action on this funding, the more opportunities we miss to save lives.

Too often, we expect people struggling with substance use disorders to self-diagnose and seek treatment. And although we have made great strides in helping more Americans access care, far too many still lack appropriate, evidence-based treatment. This week, we reaffirm our commitment to raising awareness about this disease and supporting prevention and treatment programs. Let us ensure everyone with an opioid use disorder can embark on the road to recovery, and together, let us begin to turn the tide of this epidemic.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 18 through September 24, 2016, as Prescription Opioid and Heroin Epidemic Awareness Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities that raise awareness about the prescription opioid and heroin epidemic.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–22960
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Presidential Documents

Executive Order 13740 of September 16, 2016

2016 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Part I, Part II, and Part IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached and made a part of this order.

Sec. 2. These amendments shall take effect as of the date of this order, subject to the following:

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

THE WHITE HOUSE,
September 16, 2016.

ANNEX

Section 1. Part I of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 4 is amended to read as follows:

"The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and Nonjudicial Punishment Procedures (Part I-V). This Manual shall be applied consistent with the purpose of military law.

The Department of Defense, in conjunction with the Department of Homeland Security, publishes supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Preface, a Table of Contents, Discussions, Appendices, and an Index. These supplementary materials do not have the force of law.

The Manual shall be identified by the year in which it was printed; for example, "Manual for Courts-Martial, United States (20xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "20xx" Amendments to the Manual for Courts-Martial, United States, "20xx" being the year the Executive Order was signed.

The Department of Defense Joint Service Committee (JSC) on Military Justice reviews the Manual for Courts-Martial and proposes amendments to the Department of Defense (DoD) for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice." DoD Directive 5500.17 includes provisions allowing public participation in the annual review process."

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 201(c) is amended to read as follows:

"(c) *Contempt*. A judge detailed to a court-martial may punish for contempt any person who uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial; disturbs the proceedings of the court-martial by any riot or disorder; or willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial. The punishment may not exceed confinement for 30 days or a fine of $1,000, or both."

(b) R.C.M. 307(c)(3) is amended to read as follows:

"(3) *Specification.* A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication; however, specifications under Article 134 must expressly allege the terminal element. Except for aggravating factors under R.C.M 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required."

(c) R.C.M. 307(c)(4) is amended to read as follows:

"(4) *Multiple offenses.* Charges and specifications alleging all known offenses by an accused may be preferred at the same time. Each specification shall state only one offense. What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person. Unreasonable multiplication of charges is addressed in R.C.M. 906(b)(12); multiplicity is addressed in R.C.M. 907(b)(3)(B); and punishment limitations are addressed in R.C.M. 1003(c)(1)(C)."

(d) R.C.M. 701(e) is amended to read as follows:

"(e) *Access to witnesses and evidence.* Each party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence, subject to the limitations in subsection (e)(1) of this rule. No party may unreasonably impede the access of another party to a witness or evidence.

(1) *Counsel for the Accused Interview of Victim of Alleged Sex-Related Offense.*

(A) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of a sex-related offense whom counsel for the Government intends to call to testify at a court-martial, counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall make any request to interview that victim through the Special Victims' Counsel or other counsel for the victim, if applicable.

(B) If requested by an alleged victim of a sex-related offense who is subject to a request for interview under subsection (e)(1)(A) of this rule, any interview of the victim by counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall take place only in the presence of counsel for the Government, counsel for the victim, or a sexual assault victim advocate.

(C) In this subsection, the term "sex-related offense" means—

(i) a violation of Article 120, 120a, 120b, 120c, or 125; or

(ii) an attempt to commit an offense specified in subsection (e)(1)(C)(i) of this rule under Article 80."

(e) R.C.M. 703(a) is amended to read as follows:

"(a) *In general.* The prosecution and defense and the court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in R.C.M. 701(e)(1), including the benefit of compulsory process."

(f) R.C.M. 906(b)(12) is amended to read as follows:

"(12) *Unreasonable multiplication of charges.* The military judge may provide a remedy, as provided below, if he or she finds there has been an unreasonable multiplication of charges as applied to findings or sentence.

(i) *As applied to findings.* Charges that arise from substantially the same transaction, while not legally multiplicious, may still be unreasonably multiplied as applied to findings. When the military judge finds, in his or her discretion, that the offenses have been unreasonably multiplied, the appropriate remedy shall be dismissal of the lesser offenses or merger of the offenses into one specification.

(ii) *As applied to sentence.* Where the military judge finds that the nature of the harm requires a remedy that focuses more appropriately on punishment than on findings, he or she may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding, the maximum punishment for those offenses determined to be unreasonably multiplied shall be the maximum authorized punishment of the offense carrying the greatest maximum punishment."

(g) R.C.M. 907(b)(3) is amended to read as follows:

"(3) *Permissible grounds.* A specification may be dismissed upon timely motion by the accused if one of the following is applicable:

(A) *Defective.* When the specification is so defective that it substantially misled the accused, and the military judge finds that, in the interest of justice, trial should proceed on any remaining charges and specifications without undue delay; or

(B) *Multiplicity.* When the specification is multiplicious with another specification, is unnecessary to enable the prosecution to meet the exigencies of proof through trial, review, and appellate action, and should be dismissed in the interest of justice. A charge is multiplicious if the proof of such charge also proves every element of another charge."

(h) R.C.M. 916(b)(1) is amended to read as follows:

"(1) *General rule.* Except as listed below in paragraphs (2) and (3), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(i) R.C.M. 916(b)(3) is amended to read as follows:

"(3) *Mistake of fact as to age.* In the defense of mistake of fact as to age as described in Article 120b(d)(2) in a prosecution of a child sexual offense, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence."

(j) R.C.M. 916(b)(4)is deleted.

(k) R.C.M. 916(j)(2) is amended to read as follows:

"(2) *Child Sexual Offenses.* It is a defense to a prosecution for Article 120b(b), sexual assault of a child, and Article 120b(c), sexual abuse of a child, that, at the time of the offense, the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years. The accused must prove this defense by a preponderance of the evidence."

(l) R.C.M. 916(j)(3) is deleted.

(m) R.C.M. 920(e)(5)(D) is amended to read as follows:

"(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) is raised, add: The accused has the burden of proving the defense of mistake of fact as to age by a preponderance of the evidence.]"

(n) R.C.M. 1003(c)(1)(C) is amended to read as follows:

"(C) *Multiple Offenses.* When the accused is found guilty of two or more offenses, the maximum authorized punishment may be imposed for each separate offense, unless the military judge finds that the offenses are either multiplicious or unreasonably multiplied.

(i) *Multiplicity*. A charge is multiplicious and must be dismissed if the proof of such charge also proves every element of another charged offense.

(ii) *Unreasonable Multiplication*. If the military judge finds that there is an unreasonable multiplication of charges as applied to sentence, the maximum punishment for those offenses shall be the maximum authorized punishment for the offense carrying the greatest maximum punishment. The military judge may either merge the offenses for sentencing, or dismiss one or more of the charges."

(o) R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, aggravated arson, forcible sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

(p) R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, forcible sodomy, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

(q) R.C.M. 1004(c)(9) is amended to read as follows:

"(9) That, in addition to the offense for which the accused is eligible for the death penalty, the accused has also been convicted of a sexual offense in which:

(A) Under Article 120b, the victim was under the age of 12; or

(B) Under Articles 120 or 120b, the accused maimed or attempted to kill the victim;"

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) In paragraphs 2, 4 through 59, 61-62, 64-86, 89, 91-100, and 102-113, the text of subparagraph d is uniformly amended by deleting the existing language and inserting the following words in its place:

"*Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(b) Paragraph 3.b, Article 79, Conviction of lesser included offenses, is amended to read as follows:

"b. *Explanation*.

(1) *In general*. A lesser offense is "necessarily included" in a charged offense when the elements of the lesser offense are a subset of the elements of the charged offense, thereby putting the accused on notice to defend against the lesser offense in addition to the offense specifically charged. A lesser offense may be "necessarily included" when:

(a) All of the elements of the lesser offense are included in the greater offense, and the common elements are identical (for example, larceny as a lesser included offense of robbery);

(b) All of the elements of the lesser offense are included in the greater offense, but at least one element is a subset by being legally less serious (for example, housebreaking as a lesser included offense of burglary); or

(c) All of the elements of the lesser offense are "included and necessary" parts of the greater offense, but the mental element is a subset by being legally less serious (for example, wrongful appropriation as a lesser included offense of larceny).

(2) *Sua sponte duty*. A military judge must instruct panel members on lesser included offenses reasonably raised by the evidence.

(3) *Multiple lesser included offenses*. When the offense charged is a compound offense comprising two or more lesser

included offenses, an accused may be found guilty of any or all of the offenses included in the offense charged. For example, robbery includes both larceny and assault. Therefore, in a proper case, a court-martial may find an accused not guilty of robbery, but guilty of wrongful appropriation and assault.

(4) *Findings of guilty to a lesser included offense.* A court-martial may find an accused not guilty of the offense charged, but guilty of a lesser included offense by the process of exception and substitution. The court-martial may except (that is, delete) the words in the specification that pertain to the offense charged and, if necessary, substitute language appropriate to the lesser included offense. For example, the accused is charged with murder in violation of Article 118, but found guilty of voluntary manslaughter in violation of Article 119. Such a finding may be worded as follows:

Of the Specification: Guilty, except the word "murder" substituting therefor the words "willfully and unlawfully kill," of the excepted word, not guilty, of the substituted words, guilty.

Of the Charge: Not guilty, but guilty of a violation of Article 119.

If a court-martial finds an accused guilty of a lesser included offense, the finding as to the charge shall state a violation of the specific punitive article violated and not a violation of Article 79.

(5) *Specific lesser included offenses.* Specific lesser included offenses, if any, are listed for each offense in Appendix 12A, but the list is merely guidance to practitioners, is not all-inclusive, and is not binding on military courts."

(c) Paragraph 43.c.(5)(b), Article 118 - Murder is amended to insert "forcible" immediately before "sodomy".

(d) Paragraph 44.b.(2)(d), Article 119 - Manslaughter is amended to insert "forcible" immediately before "sodomy".

(e) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by deleting the following note:

"[Note: The subparagraphs that would normally address elements, explanation, lesser included offenses, maximum punishments, and sample specifications are generated under the President's authority to prescribe rules pursuant to Article 36. At the time of publishing this MCM, the President had not prescribed such rules for this version of Article 120. Practitioners should refer to the appropriate statutory language and, to the extent practicable, use Appendix 28 as a guide.]"

(f) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph b immediately after subparagraph a to read as follows:

"b. *Elements.*

(1) *Rape involving contact between penis and vulva or anus or mouth.*

(a) *By unlawful force*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so with unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.

(d) *By first rendering that other person unconscious*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by first rendering that other person unconscious.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.

(2) *Rape involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *By force*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Sexual assault involving contact between penis and vulva or anus or mouth.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by threatening or placing that other person in fear.

(b) *By causing bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by causing bodily harm to that other person.

(c) *By fraudulent representation*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose.

(d) *By false pretense*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(f) *When the other person is incapable of consenting*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability; and

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person.

(4) *Sexual assault involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose when it served no professional purpose; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(5) *Aggravated sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By force*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(6) *Aggravated sexual contact involving the touching of any body part of any person.*

(a) *By force*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by administering to that other person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(7) *Abusive sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(8) *Abusive sexual contact involving the touching of any body part of any person.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose when it served no professional purpose; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iv) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant, or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to arouse or gratify the sexual desire of any person."

(g) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph c immediately after subparagraph b to read as follows:

"c. *Explanation.*

(1) *In general*. Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions*. The terms are defined in Paragraph 45.a.(g).

(3) *Victim character and privilege*. See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense. See Mil. R. Evid. 514 concerning rules of evidence relating to privileged communications between the victim and victim advocate.

(4) *Consent as an element*. Lack of consent is not an element of any offense under this paragraph unless expressly stated. Consent may be relevant for other purposes."

(h) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph d immediately after subparagraph c to read as follows:

"d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(i) Paragraph 45, Article 120 - Rape and sexual assault generally, subparagraph e is amended to read as follows:

"e. *Maximum punishments*.

(1) *Rape.* Forfeiture of all pay and allowances and confinement for life without eligibility for parole. Mandatory minimum - Dismissal or dishonorable discharge.

(2) *Sexual assault.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum - Dismissal or dishonorable discharge.

(3) *Aggravated sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Abusive sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years."

(j) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph f immediately after subparagraph e to read as follows:

"f. *Sample specifications.*

(1) *Rape involving contact between penis and vulva or anus or mouth.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about _____, commit a sexual act upon ____________ by causing penetration of ___________'s (vulva) (anus) (mouth) with _________'s penis, by using unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon ____________ by causing penetration of ___________'s (vulva) (anus) (mouth) with _______'s penis, by using force likely to cause death or grievous bodily harm to _________, to wit: _____________.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________ by causing penetration of _________'s (vulva) (anus) (mouth) with _______'s penis, by (threatening ________) (placing _______ in fear) that _____________ would be subjected to (death) (grievous bodily harm) (kidnapping).

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________ by causing penetration of __________'s (vulva) (anus) (mouth) with ________'s penis, by first rendering __________ unconscious by __________________.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon ____________ by causing penetration of ___________'s (vulva) (anus) (mouth) with _________'s penis, by administering to ____________ (by force) (by threat of force) (without the knowledge or permission of ___________) a (drug) (intoxicant) (list other similar substance), to wit: ________, thereby substantially impairing the ability of ___________ to appraise or control his/her conduct.

(2) *Rape involving penetration of genital opening by any part of the body or any object.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon _________, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object) by using unlawful force, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) ____________.

(b) *By force causing or likely to cause death or grievous bodily injury.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon _________, by penetrating the (vulva) (anus) (mouth) of __________ with (list body part or object) by using force likely to cause death or grievous bodily harm to ________, to wit: _________________, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) ____________.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about ___ 20__, commit a sexual act upon ________, by penetrating the (vulva) (anus) (mouth) of __________ with (list body part or object) by (threatening ______) (placing ______ in fear) that __________ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) ____________.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon ________, by penetrating the (vulva) (anus) (mouth) of ________ with (list body part or object) by first rendering ________ unconscious, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) ____________.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon _________, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object) by administering to

____________ (by force) (by threat of force) (without the knowledge or permission of ___________) a (drug) (intoxicant) (list other similar substance), to wit: ________, thereby substantially impairing the ability of ___________ to appraise or control his/her conduct, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) ____________.

(3) *Sexual assault involving contact between penis and vulva or anus or mouth.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon _________, by causing penetration of _________'s (vulva) (anus) (mouth) with _________'s penis, by (threatening _________) (placing _________ in fear).

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon _______, by causing penetration of __________'s (vulva) (anus) (mouth) with _______'s penis by causing bodily harm to _________, to wit: _________.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________, by causing penetration of _________'s (vulva) (anus) (mouth) with _________'s penis by making a fraudulent representation that the sexual act served a professional purpose, to wit: __________.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________, by causing penetration of _________'s (vulva) (anus) (mouth) with _________'s penis by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon _________, by causing penetration of __________'s (vulva) (anus) (mouth) with ________'s penis when he/she knew or reasonably should have known that ________ was (asleep) (unconscious) (unaware the sexual act was occurring due to _________).

(f) *When the other person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon _________, by causing penetration of __________'s (vulva) (anus) (mouth) with _______'s penis, when _________ was incapable of consenting to the sexual act because he/she [was impaired by (a drug, to wit: ______) (an intoxicant, to wit:

__________) ( )] [had a (mental disease, to wit: ________) (mental defect, to wit: _________) (physical disability, to wit: _________)], a condition that was known or reasonably should have been known by the said accused.

(4) *Sexual assault involving penetration of vulva or anus or mouth by any part of the body or any object.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon __________, by penetrating the (vulva) (anus) (mouth) of ______________ with (list body part or object), by (threatening __________) (placing __________ in fear), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon __________, by penetrating the (vulva) (anus) (mouth) of ______________ with (list body part or object), by causing bodily harm to __________, to wit:_________ with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________, by penetrating the (vulva) (anus) (mouth) of ______________ with (list body part or object), by making a fraudulent representation that the sexual act served a professional purpose, to wit: __________, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon _________, by penetrating the (vulva) (anus) (mouth) of _____________ with (list body part or object), by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________, by penetrating the (vulva) (anus) (mouth) of _____________ with (list body part or object), when he/she knew or reasonably should have known that _________ was (asleep) (unconscious) (unaware the sexual act was occurring due to ________), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ___________.

(f) *When the other person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a sexual act upon __________, by penetrating the (vulva) (anus) (mouth) of ______________ with (list body part or object), when ____________ was incapable of consenting to the sexual act because he/she [was impaired by (a drug, to wit: ______) (an intoxicant, to wit: __________) ( )] [had a (mental disease, to wit: ________) (mental defect, to wit: _________) (physical disability, to wit: _________)], a condition that was known or reasonably should have been known by the said accused, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(5) *Aggravated sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause _______ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______, by using unlawful force, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause _________ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______, by using force likely to cause death or grievous bodily harm to _________, to wit: _________, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause _________ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of ______, by (threatening ________) (placing ______ in fear) that _________ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, [(touch) (cause

________ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______, by rendering _______ unconscious by __________, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _______.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause __________ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of __________, by administering to ____________ (by force) (by threat of force) (without the knowledge or permission of ____) a (drug) (intoxicant) (___) thereby substantially impairing the ability of ___________ to appraise or control his/her conduct, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(6) *Aggravated sexual contact involving the touching of any body part of any person.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause ________ to touch)] [(directly) (through the clothing)] (name of body part) of _______, by using unlawful force, with an intent to (arouse) (gratify the sexual desire of) __________.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause _________ to touch)] [(directly) (through the clothing)] (name of body part) of _______, by using force likely to cause death or grievous bodily harm to ________, to wit: _____________, with an intent to (arouse) (gratify the sexual desire of) __________.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, [(touch) (cause ________ to touch)] [(directly) (through the clothing)] (name of body part) of _______, by (threatening _________) (placing _______ in fear) that _____________ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (arouse) (gratify the sexual desire of) __________.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause _________ to touch)] [(directly) (through the clothing)] (name of body part) of _______, by rendering __________ unconscious by ________________, with an intent to (arouse) (gratify the sexual desire of) __________.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause _________ to touch)] [(directly) (through the clothing)] (name of body part) of ______, by administering to _________ (by force) (by threat of force) (without the knowledge or permission of __________) a (drug) (intoxicant) (____) and thereby substantially impairing the ability of ___________ to appraise or control his/her conduct, with an intent to (arouse) (gratify the sexual desire of) __________.

(7) *Abusive sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______ by (threatening ________) (placing _________ in fear), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______ by causing bodily harm to __________, to wit: ___________________, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of __________ by making a fraudulent representation that the sexual contact served a professional purpose, to wit: __________, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of __________ by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about ___ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______ when he/she knew or reasonably should have known that _______ was (asleep) (unconscious) (unaware the sexual contact was occurring due to _________), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(f) *When that person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of ______ when _________ was incapable of consenting to the sexual contact because he/she [was impaired by (a drug, to wit: ______) (an intoxicant, to wit: __________) ( )] [had a (mental disease, to wit: ________) (mental defect, to wit: _________) (physical disability, to wit: _________)] and this condition was known or reasonably should have been known by ___________, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) __________.

(8) *Abusive sexual contact involving the touching of any body part of any person.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _______ by (threatening _________) (placing __________ in fear), with an intent to (arouse) (gratify the sexual desire of) __________.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _______ by causing bodily harm to __________, to wit: _____________, with an intent to (arouse) (gratify the sexual desire of) __________.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _______ by making a fraudulent representation that the sexual contact served a professional purpose, to wit: __________, with an intent to (arouse) (gratify the sexual desire of) __________.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _______ by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (arouse) (gratify the sexual desire of) __________.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _______ when he/she knew or reasonably should have known that _________ was (asleep) (unconscious) (unaware the sexual contact was occurring due to _________), with an intent to (arouse) (gratify the sexual desire of) __________.

(f) *When that person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _______ when ____________ was incapable of consenting to the sexual contact because he/she [was impaired by (a drug, to wit: ______) (an intoxicant, to wit: __________) ( )] [had a (mental disease, to wit: ________) (mental defect, to wit: _________) (physical disability, to wit: _________)], a condition that was known or reasonably should have been known by _____________, with an intent to (arouse) (gratify the sexual desire of) __________."

(k) Paragraph 45b, Article 120b - Rape and sexual assault of a child, is amended by deleting the following note, which appears immediately after subparagraph a:

"[Note: The subparagraphs that would normally address elements, explanation, lesser included offenses, maximum punishments, and sample specifications are generated under the President's authority to prescribe rules pursuant to Article 36. At the time of publishing this MCM, the President had not prescribed such rules for this new statute, Article 120b. Practitioners should refer to the appropriate statutory language and, to the extent practicable, use Appendix 28 as a guide.]"

(l) Paragraph 45b, Article 120b - Rape and Sexual assault of a child, is amended by inserting new subparagraph b immediately after subparagraph a to read as follows:

"b. *Elements.*

(1) *Rape of a child involving contact between penis and vulva or anus or mouth.*

(a) *Rape of a child who has not attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had not attained the age of 12 years.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years, and

(iii) That the accused did so by using force against that child or any other person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening the child or another person or placing that child in fear.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance.

(2) *Rape of a child involving penetration of vulva or anus or mouth by any part of the body or any object.*

(a) *Rape of a child who has not attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had not attained the age of 12 years; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by using force against that child or any other person; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by threatening the child or another person or placing that child in fear; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by rendering that child unconscious; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 involving contact between penis and vulva or anus or mouth.*

(i) That the accused committed a sexual act upon a child causing contact between penis and vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(b) *Sexual assault of a child who has attained the age of 12 involving penetration of vulva or anus or mouth by any part of the body or any object.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(4) *Sexual abuse of a child.*

(a) *Sexual abuse of a child by sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(i) That the accused committed sexual contact upon a child by touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person; and

(ii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *Sexual abuse of a child by sexual contact involving the touching of any body part.*

(i) That the accused committed sexual contact upon a child by touching, or causing another person to touch, either directly or through the clothing, any body part of any person; and

(ii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *Sexual abuse of a child by indecent exposure.*

(i) That the accused intentionally exposed his or her genitalia, anus, buttocks, or female areola or nipple to a child by any means; and

(ii) That the accused did so with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(d) *Sexual abuse of a child by indecent communication.*

(i) That the accused intentionally communicated indecent language to a child by any means; and

(ii) That the accused did so with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(e) *Sexual abuse of a child by indecent conduct.*

(i) That the accused engaged in indecent conduct, intentionally done with or in the presence of a child;

and

(ii) That the indecent conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations."

(m) Paragraph 45b, Article 120b – Rape and sexual assault of a child, is amended by inserting new subparagraph c immediately after subparagraph b to read as follows:

"c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.* Terms not defined in this paragraph are defined in paragraph 45b.a.(h), *supra.*"

(n) Paragraph 45b, Article 120b – Rape and sexual assault of a child, is amended by inserting new subparagraph d immediately after subparagraph c to read as follows:

"d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(o) Paragraph 45b, Article 120b – Rape and sexual assault of a child, subparagraph e is amended to read as follows:

"e. *Maximum punishment.*

(1) *Rape of a child.* Forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum - Dismissal or dishonorable discharge.

(2) *Sexual assault of a child.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum - Dismissal or dishonorable discharge.

(3) *Sexual abuse of a child.*

(a) *Cases involving sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years."

(p) Paragraph 45b, Article 120b - Rape and sexual assault of a child, is amended by inserting new subparagraph f immediately after subparagraph e to read as follows:

"f. *Sample specifications.*

(1) *Rape of a child involving contact between penis and vulva or anus or mouth.*

(a) *Rape of a child who has not attained the age of 12.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, commit a sexual act upon

__________, a child who had not attained the age of 12 years, by causing penetration of _________'s (vulva) (anus) (mouth) with _________'s penis.

(b) *Rape by force of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of _________'s (vulva) (anus) (mouth) with _________'s penis, by using force against ________, to wit: ______________.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of _________'s (vulva) (anus) (mouth) with _______'s penis by (threatening ______) (placing _______ in fear).

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon ________, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of ________'s (vulva) (anus) (mouth) with _________'s penis by rendering __________ unconscious by ___________________.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of __________'s (vulva) (anus) (mouth) with ________'s penis by administering to ____________ a (drug) (intoxicant) (____), to wit: ______________.

(2) *Rape of a child involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *Rape of a child who has not attained the age of 12.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a sexual act upon _________, a child who had not attained the age of 12 years, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(b) *Rape by force of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object), by using force against ________, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object), by (threatening __________) (placing _______ in fear), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object), by rendering __________ unconscious, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object), by administering to ____________ a (drug) (intoxicant) (____), to wit: __________, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(3) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 years involving contact between penis and vulva or anus or mouth.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon _______, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of ___________'s (vulva) (anus) (mouth) with _________'s penis.

(b) *Sexual assault of a child who has attained the age of 12 years involving penetration of vulva or anus or mouth by any part of the body or any object.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a sexual act upon __________, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of ____________ with (list body part or object), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(4) *Sexual abuse of a child.*

(a) *Sexual abuse of a child involving sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a lewd act upon __________, a child who had not attained the age of 16 years, by intentionally [(touching) (causing _________ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _______, with an intent to (abuse) (humiliate) (degrade) __________.

(b) *Sexual abuse of a child involving sexual contact involving the touching of any body part of any person.* In that (personal jurisdiction data), did (at/on board location), on or about ______ 20__, commit a lewd act upon __________, a child who had not attained the age of 16 years, by intentionally exposing [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] to ___________, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(c) *Sexual abuse of a child involving indecent exposure.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20__, commit a lewd act upon _______, a child who had not attained the age of 16 years, by intentionally [(touching) (causing _________ to touch)] [(directly) (through the clothing)] (name of body part) of _______, with an intent to (arouse) (gratify the sexual desire of) __________.

(d) *Sexual abuse of a child involving indecent communication.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, commit a lewd act upon __________, a child who had not attained the age of 16 years, by intentionally communicating to ________ indecent language to wit: ___________, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) ____________.

(e) *Sexual abuse of a child involving indecent conduct.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, commit a lewd act upon __________, a child who had not attained the age of 16 years, by engaging in indecent conduct, to wit: __________, intentionally done (with) (in the presence of) _______, which conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations."

(q) Paragraph 45c.a.(c), Article 120c – Other sexual misconduct, is amended by deleting the phrase "(c) *Definitions*." and inserting the phrase "(d) *Definitions*." in its place.

(r) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by deleting the following note, which appears immediately after subparagraph a:

"[Note: The subparagraphs that would normally address elements, explanation, lesser included offenses, maximum punishments, and sample specifications are generated under the President's authority to prescribe rules pursuant to Article 36. At the time of publishing this MCM, the President had not prescribed such rules for this new statute, Article 120c. Practitioners should refer to the appropriate statutory language and, to the extent practicable, use Appendix 28 as a guide.]"

(s) Paragraph 45c, Article 120c - Other sexual misconduct, is amended by inserting new subparagraph b immediately after subparagraph a to read as follows:

"b. *Elements.*

(1) *Indecent viewing.*

(a) That the accused knowingly and wrongfully viewed the private area of another person;

(b) That said viewing was without the other person's consent; and

(c) That said viewing took place under circumstances in which the other person had a reasonable expectation of privacy.

(2) *Indecent recording.*

(a) That the accused knowingly recorded (photographed, videotaped, filmed, or recorded by any means) the private area of another person;

(b) That said recording was without the other person's consent; and

(c) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(3) *Broadcasting of an indecent recording.*

(a) That the accused knowingly broadcast a certain recording of another person's private area;

(b) That said recording was made or broadcast without the other person's consent;

(c) That the accused knew or reasonably should have known that the recording was made or broadcast without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(4) *Distribution of an indecent visual recording.*

(a) That the accused knowingly distributed a certain recording of another person's private area;

(b) That said recording was made or distributed without the other person's consent;

(c) That the accused knew or reasonably should have known that said recording was made or distributed without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(5) *Forcible pandering.*

That the accused compelled another person to engage in an act of prostitution with any person.

(6) *Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the exposure was in an indecent manner; and

(c) That the exposure was intentional."

(t) Paragraph 45c, Article 120c - Other sexual misconduct, is amended by inserting new subparagraph c immediately after subparagraph b to read as follows:

"c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.*

(a) *Recording.* A "recording" is a still or moving visual image captured or recorded by any means.

(b) Other terms are defined in paragraph 45c.a.(d), *supra.*"

(u) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by inserting new subparagraph d immediately after subparagraph c to read as follows:

"d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(v) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by inserting new subparagraph f immediately after subparagraph e to read as follows:

"f. *Sample specifications.*

(1) *Indecent viewing, visual recording, or broadcasting.*

(a) *Indecent viewing.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, knowingly and wrongfully view the private area of __________, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(b) *Indecent visual recording.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, knowingly (photograph) (videotape) (film) (make a recording of) the private area of __________, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(c) *Broadcasting or distributing an indecent visual recording.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, knowingly (broadcast) (distribute) a recording of the private area of __________, when the said accused knew or reasonably should have known that the said recording was (made) (and/or) (distributed/broadcast) without the consent of ______________ and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(2) *Forcible pandering.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, wrongfully compel __________ to engage in (a sexual act) (sexual contact) with ___________, to wit: ____________, for the purpose of receiving (money) (other compensation) (_______).

(3) *Indecent exposure.* In that (personal jurisdiction data), did (at/on board location), on or about _______ 20__, intentionally expose [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] in an indecent manner, to wit: ___________."

(wx) Paragraph 51, Article 125 - Sodomy is amended to read as follows:

"51. Article 125—Forcible sodomy; bestiality

a. *Text of statute.*

(a) ***Forcible Sodomy.*—Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex by unlawful force or without the consent of the other person is guilty of forcible sodomy and shall be punished as a court-martial may direct.**

(b) ***Bestiality.*—Any person subject to this chapter who engages in unnatural carnal copulation with an animal is guilty of bestiality and shall be punished as a court-martial may direct.**

(c) ***Scope of Offenses.*—Penetration, however slight, is sufficient to complete an offense under subsection (a) or (b).**

b. *Elements.*

(1) *Forcible sodomy.*

(a) That the accused engaged in unnatural carnal copulation with a certain other person.

(b) That the act was done by unlawful force or without the consent of the other person.

(2) *Bestiality.*

(a) That the accused engaged in unnatural carnal copulation with an animal.

c. *Explanation.*

(1) It is unnatural carnal copulation for a person to take into that person's mouth or anus the sexual organ of another person or of an animal; or to place that person's sexual organ in the mouth or anus of another person or of an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation with an animal.

(2) For purposes of this Article, the term "unlawful force" means an act of force done without legal justification or excuse.

d. *Lesser included offenses.*

See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Forcible sodomy.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum - Dismissal or dishonorable discharge.

(2) *Bestiality.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

(1) *Forcible sodomy.* In that (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ________20__, engage in unnatural

carnal copulation with _______, by unlawful force or without the consent of the said ______.

(2) *Bestiality*. In that (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ________20__, engage in unnatural carnal copulation with (type of animal)."

(x) In paragraphs 62, 64-86, 89, 91-100a, and 102-113, the sample specifications in subparagraph f are uniformly amended by inserting the words below between the last word and the period in each sample specification:

", and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces)."

(y) Paragraph 60.b, Article 134(b)-General Article, is amended to read as follows:

"b. *Elements*. The proof required for conviction of an offense under Article 134 depends upon the nature of the misconduct charged. If the conduct is punished as a crime or offense not capital, the proof must establish every element of the crime or offense as required by the applicable law. All offenses under Article 134 require proof of a single terminal element; however, the terminal element may be proven using any of three theories of liability corresponding to clause 1, 2, or 3 offenses.

(1) For clause 1 or 2 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts; and

(b) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) For clause 3 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts that satisfy each element of the federal statute (including, in the case of a prosecution under 18 U.S.C. § 13, each element of the assimilated State, Territory, Possession, or District law); and

(b) That the offense charged was an offense not capital."

(z) Paragraph 60, Article 134 - General Article, subparagraph c.(6)(a) is amended to read as follows:

"(a) *Specifications under clause 1 or 2.* When alleging a clause 1 or 2 violation, the specification must expressly allege that the conduct was "to the prejudice of good order and discipline" or that it was "of a nature to bring discredit upon the armed forces." The same conduct may be prejudicial to good order and discipline in the armed forces and at the same time be of a nature to bring discredit upon the armed forces. Both clauses may be alleged; however, only one must be proven to satisfy the terminal element. If conduct by an accused does not fall under any of the enumerated Article 134 offenses (paragraphs 61 through 113 of this Part), a specification not listed in this Manual may be used to allege the offense."

(aa) Paragraph 60, Article 134 - General Article, subparagraph c.(6)(b) is amended to read as follows:

"(b) *Specifications under clause 3.* When alleging a clause 3 violation, the specification must expressly allege that the conduct was "an offense not capital," and each element of the federal statute (including, in the case of a prosecution under 18 U.S.C. § 13, each element of the assimilated State, Territory, Possession, or District law) must be alleged expressly or by necessary implication. In addition, the federal statute should be identified."

(bb) Paragraph 60, Article 134 - General Article, subparagraph c.(6)(c) is deleted.

(cc) Paragraph 61, Article 134 - Abusing public animal, is amended to read as follows:

"61. Article 134—(Animal Abuse)

a. *Text of statute. See* paragraph 60.

b. *Elements.*

(1) *Abuse, neglect, or abandonment of an animal.*

(a) That the accused wrongfully abused, neglected, or abandoned a certain (public*) animal (and the accused caused the serious injury or death of the animal*); and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(*Note: Add these elements as applicable.)

(2) *Sexual act with an animal.*

(a) That the accused engaged in a sexual act with a certain animal; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense prohibits knowing, reckless, or negligent abuse, neglect, or abandonment of an animal. This offense does not include legal hunting, trapping, or fishing; reasonable and recognized acts of training, handling, or disciplining of an animal; normal and accepted farm or

veterinary practices; research or testing conducted in accordance with approved military protocols; protection of person or property from an unconfined animal; or authorized military operations or military training.

(2) *Definitions*. As used in this paragraph:

(A) "Abuse" means intentionally and unjustifiably: overdriving, overloading, overworking, tormenting, beating, depriving of necessary sustenance, allowing to be housed in a manner that results in chronic or repeated serious physical harm, carrying or confining in or upon any vehicles in a cruel or reckless manner, or otherwise mistreating an animal. Abuse may include any sexual touching of an animal if not included in the definition of "sexual act with an animal" below.

(B) "Neglect" means allowing another to abuse an animal, or, having the charge or custody of any animal, intentionally, knowingly, recklessly, or negligently failing to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved.

(C) "Abandon" means the intentional, knowing, reckless or negligent leaving of an animal at a location without providing minimum care while having the charge or custody of that animal.

(D) "Animal" means pets and animals of the type that are raised by individuals for resale to others, including but not limited to: cattle, horses, sheep, pigs, goats, chickens, dogs, cats, and similar animals owned or under the control of any person. Animal does not include reptiles, insects, arthropods, or any animal defined or declared to be a pest by the administrator of the United States Environmental Protection Agency.

(E) "Public animal" means any animal owned or used by the United States or any animal owned or used by a local or State government in the United States, its territories or possessions. This would include, for example, drug detector dogs used by the government.

(F) "Sexual act with an animal" means contact between the sex organ, anus, or mouth of a person and an animal or between the sex organ, mouth, or anus of an animal and a person or object manipulated by a person if done with an intent to arouse or gratify the sexual desire of any person.

(G) "Serious injury of an animal" means physical harm that involves a temporary but substantial disfigurement; causes a temporary but substantial loss or impairment of the function of any bodily part or organ; causes a fracture of any bodily part; causes permanent maiming; causes acute pain of a duration that results in suffering; or carries a substantial risk of death. Serious injury includes, but is not limited to, burning, torturing, poisoning, or maiming.

d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Abuse, neglect, or abandonment of an animal.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Abuse, neglect, or abandonment of a public animal.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *Sexual act with an animal or cases where the accused caused the serious injury or death of the animal.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _________, (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about (date), (wrongfully [abuse] [neglect] [abandon]) (*engage in a sexual act, to wit: _________, with) a certain (*public) animal (*and caused [serious injury to] [the death of] the animal), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

(dde) Paragraph 64, Article 134 - Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking is amended by inserting "forcible" immediately preceding every occurrence of the word "sodomy".

(ee) Paragraph 90, Article 134 - Deleted—See Appendix 27, is amended to read as follows:

"90. Article 134 –(Indecent conduct)

a. *Text of Statute. See* paragraph 60.

b. *Elements.*

(1) That the accused engaged in certain conduct;

(2) That the conduct was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) "Indecent" means that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(2) Indecent conduct includes offenses previously proscribed by "Indecent acts with another" except that the

presence of another person is no longer required. For purposes of this offense, the words "conduct" and "act" are synonymous. For child offenses, some indecent conduct may be included in the definition of lewd act and preempted by Article 120b(c). *See* paragraph 60c(5)(a).

d. *Lesser included offense. See* paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that ______ (personal jurisdiction data), did (at/on board - location) (subject-matter jurisdiction data, if required), on or about (date), (wrongfully commit indecent conduct, to wit: _________), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces).

(ff) Paragraph 97, Article 134 - Pandering and prostitution, subparagraph b.(1)(a) is amended by replacing "had sexual intercourse" with "engaged in a sexual act".

(gg) Paragraph 97, Article 134 - Pandering and prostitution, subparagraph b.(2)(a) is amended by replacing "had sexual intercourse" with "engaged in a sexual act".

(hh) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(2)(b) is amended by replacing "engage in an act of sexual intercourse" with "engage in a sexual act".

(ii) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(3)(a) is amended by replacing "engage in an act of sexual intercourse" with "engage in a sexual act".

(jj) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(4) is amended by replacing "*Pandering by arranging or receiving consideration for arranging for sexual intercourse or sodomy.*" with "(4) *Pandering by arranging or receiving consideration for arranging for a sexual act.*"

(kk) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(4)(a) is amended by replacing "engage in an act of sexual intercourse or sodomy" with "engage in a sexual act".

(ll) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph c is amended to read as follows:

"c. *Explanation*.

(1) Prostitution may be committed by males or females.

(2) *Sexual act. See* paragraph 45.a.(g)(1)."

(mm) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph f.(1) is amended by replacing "(an act) (acts) of sexual intercourse" with "(a sexual act) (sexual acts)".

(nn) Paragraph 97, Article 134 - Pandering and prostitution, subparagraph f.(2) is amended by replacing "(an act) (acts) of sexual intercourse" with "(a sexual act) (sexual acts)".

(oo) Paragraph 97, Article 134 - Pandering and prostitution, subparagraph f.(3) is amended by replacing "(an act) (acts) of sexual intercourse" with "(a sexual act) (sexual acts)".

[FR Doc. 2016–22962
Filed 9–21–16; 8:45 a.m.]
Billing code 5001–06–C

Rules and Regulations

Federal Register
Vol. 81, No. 184
Thursday, September 22, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5392; Directorate Identifier 2016–NE–10–AD; Amendment 39–18654; AD 2016–19–05]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain International Aero Engines AG (IAE) V2500–A1 turbofan engines. This AD was prompted by a report of an uncontainment caused by a high-pressure turbine (HPT) seal release. This AD requires removing the HPT No. 4 bearing front seal seat, part numbers (P/Ns) 2A0066, 2A1998, and 2A3432, and the HPT No. 4 bearing rear seal seat, P/Ns 2A0067, 2A1999, and 2A3433, and replacing them with parts eligible for installation. This AD also requires inspecting the HPT rotor and stator assembly, and, if necessary, their replacement with parts that are eligible for installation. We are issuing this AD to prevent failure of the HPT stage 2 seals, uncontained HPT seal release, damage to the engine, and damage to the airplane.

DATES: This AD is effective October 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 27, 2016.

ADDRESSES: For service information identified in this final rule, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* Internet: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5392.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5392; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain IAE V2500–A1 turbofan engines. The NPRM published in the **Federal Register** on April 13, 2016 (81 FR 21768). The NPRM was prompted by a report of an uncontainment caused by a HPT seal release. The NPRM proposed to require removing from service the HPT No. 4 bearing front seal seat, P/Ns 2A0066, 2A1998, and 2A3432, and the HPT No. 4 bearing rear seal seat, P/Ns 2A0067, 2A1999, and 2A3433, and replacement with parts eligible for installation. This AD would also require inspecting the HPT rotor and stator assembly, and, if necessary, their replacement with parts that are eligible for installation. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (81 FR 21768, April 13, 2016) and the FAA's response to each comment.

Request To Allow Monitoring of Oil Consumption and Monitoring Analysis

Air India Ltd. (AIL) commented that the fracture of the HPT stage 2 seal is a known problem with the type design. AIL does not agree that the root cause of the failure is clogged No. 4 bearing seal seats. AIL finds that increases in oil consumption and/or vibration signature are precursors to failure of the HPT stage 2 seal. We interpret AIL's comment as a request to allow monitoring of oil consumption rate and vibration signature analysis instead of the requirements of this AD.

We disagree. We disagree with AIL's analysis of the unsafe condition because although other failure modes leading to fracture of the HPT stage 2 seal exist, the uncontained part release noted in the NPRM (81 FR 21768, April 13, 2016) was caused by blockage of the No. 4 bearing seal seat's anti-weep circuit. We disagree with allowing oil consumption monitoring and vibration signature analysis because they do not provide an acceptable level of safety for engines with seal seats processed using methods susceptible to oil blockage. We did not change this AD.

Request To Delay Compliance

AIL commented that we should delay compliance to this AD until December 31, 2017. This additional time to comply with this AD would allow for minimal disruption to its fleet operations. AIL indicated that fleet safety would be maintained through engine oil consumption monitoring and vibration signature analysis.

We disagree. As noted in our previous comment response, oil consumption monitoring and vibration signature analysis do not provide an acceptable level of safety for engines with seal seats processed using methods susceptible to oil blockage. We did not change this AD.

Request To Revise Applicability

AIL commented that the applicability of this AD should not be limited to the IAE V2500–A1 fleet.

We disagree. The applicability of this AD is limited to the IAE V2500–A1 engines with affected serial numbers because this population of engines has been identified as having been processed using methods that could lead to failure of the HPT stage 2 seals. We did not change this AD.

Request To Include End Date for Compliance

IAE and Airbus commented that we should include an end date of December 31, 2016, for compliance with this AD.

We disagree. Our analysis of the unsafe condition determined that blockage of the No. 4 bearing seal seat anti-weep grooves is a function of engine cycles rather than time in service. We therefore did not base compliance on a calendar date. We did not change this AD.

Request To Require Oil Monitoring and Turbine Case Inspection

IAE and Airbus commented that not mandating oil monitoring and inspection of the turbine case weep-hole may increase risk to operators if they follow only the requirements of this AD. IAE indicated that this AD should match the compliance requirements of IAE SB V2500–ENG–72–0670, dated March 14, 2016.

We disagree. We find that the actions required by this AD adequately address the unsafe condition represented by the possibility of failure of the HPT stage 2 seals while not imposing unnecessary burdens on operators. We did not change this AD.

Revision to Compliance

We revised the compliance section to allow installed No. 4 bearing front and rear seal seats to be returned to service following removal and refurbishment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 21768, April 13, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 21768, April 13, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0670, dated March 14, 2016. The NMSB identifies affected engines and provides guidance for replacing the No. 4 bearing front and rear seal seats and for inspecting the HPT rotor and stator assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry. We estimate that it will take about 10 hours to perform the seal seat replacement. The average labor rate is $85 per hour. We also estimate the cost of No. 4 bearing front and rear seal seats to be $13,562. Based on these figures, we estimate the cost of this AD on U.S. operators to be $0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–19–05 International Aero Engines AG: Amendment 39–18654; Docket No. FAA–2016–5392; Directorate Identifier 2016–NE–10–AD.

(a) Effective Date

This AD is effective October 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines AG (IAE) V2500–A1 turbofan engines with serial numbers listed under Planning Information, Effectivity Data in IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0670, dated March 14, 2016.

(d) Unsafe Condition

This AD was prompted by a report of an uncontainment caused by a high-pressure turbine (HPT) seal release. We are issuing this AD to prevent failure of the HPT stage 2 seal, uncontained HPT seal release, damage to the engine, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Prior to accumulating 500 cycles in service after the effective date of this AD,

(i) Remove the No. 4 bearing front seal seat, part numbers (P/Ns) 2A0066, 2A1998, 2A3432; and the No. 4 bearing rear seal seat, P/Ns 2A0067, 2A1999, 2A3433, and replace with parts eligible for installation.

(ii) Inspect the HPT rotor and stator assembly. Use the Accomplishment

Instructions, Part C, paragraph 1.B. of IAE NMSB V2500–ENG–72–0670, dated March 14, 2016 to perform the inspection.

(2) For any parts that fail the inspection required by paragraph (e)(1)(ii) of this AD, before further flight, remove and replace with parts eligible for installation.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(h) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) International Aero Engines AG (IAE) Non-Modification Service Bulletin V2500–ENG–72–0670, dated March 14, 2016.

(ii) Reserved.

(3) For IAE service information identified in this AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* Internet: *http://fleetcare.pw.utc.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 15, 2016.

Ann C. Mollica,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–22703 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7487; Airspace Docket No. 15–ACE–7]

Amendment of Class D and E Airspace and Revocation of Class E Airspace; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D and E airspace areas at Sioux Gateway/Col. Bud Day Field, Sioux City, IA, due to the decommissioning of the Gateway non-directional radio beacon (NDB) and cancellation of the NDB approaches at the airport. The Class E airspace area designated as an extension is being removed as it is no longer needed. Advances in Global Positioning System (GPS) capabilities have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the geographic coordinates for Martin Field, NE., to coincide with the FAAs aeronautical database.

DATES: Effective 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and E airspace at Sioux Gateway/Col. Bud Day Field, Sioux City, IA.

History

On April 13, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D airspace, Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface at Sioux Gateway/Col. Bud Day Field, Sioux City, IA (81 FR 21772) FAA–2015–7487. The Class E airspace area designated as an extension also would be removed as the extension is no longer needed. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from Thomas Glennon, Aeronautical Information Services, citing a correction to the geographic coordinates for Martin Field, South Sioux City, NE., which has been incorporated into this final rule.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists

Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface at Sioux Gateway/Col. Bud Day Field, Sioux City, IA. The Class E airspace area designated as an extension also would be removed as the extension is no longer needed. After review, the FAA found that due to the decommissioning of the Gateway NDB, cancellation of the NDB approaches at the airport, advances in GPS capabilities, and implementation of RNAV procedures at Sioux Gateway/Col. Bud Day Field, the Class E airspace designated as a surface area no longer requires extensions and is reduced to within a 4.3-mile radius of the airport; the Class E airspace designated as an extension to the Class D or Class E surface area is removed; and the Class E airspace area extending upward from 700 feet above the surface at the airport is reduced from a 7-mile radius to a 6.8-mile radius, with the northwest extension increased from 3 miles to 3.9 miles each side of the Sioux City VORTAC 319° radial extending from the 6.8-mile radius to 14.4 miles vice 25.3 miles; the northwest extension remains unchanged 4 miles each side of the 001° bearing from the airport from the 6.8-mile radius to 12 miles. The extensions to the southeast and northwest on the Sioux City VORTAC 316° radial are no longer required. All modifications to the Class E airspace are in accordance with airspace requirements specified in FAA Joint Order 7400.2K. This action is necessary for the safety and management of IFR operations under standard instrument approach procedures at the airport. The geographic coordinates for Martin Field, South Sioux City, NE., are amended for the existing Class D and E airspace areas.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Sioux City, IA [Amended]

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′15″ N., long. 96°28′21″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of South Sioux City, Martin Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Sioux City, IA [Amended]

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′15″ N., long. 96°28′21″ W.)

Within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE IA E4 Sioux City, IA [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Sioux City, IA [Amended]

Sioux City, Sioux Gateway Airport/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
Sioux City VORTAC
(Lat. 42°20′40″ N., long. 96°19′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Sioux Gateway Airport/Col. Bud Day Field, and within 3.9 miles each side of the 319° radial of the Sioux City VORTAC extending from the 6.8-mile radius to 14.4 miles northwest of the VORTAC, and within 4 miles each side of the 001° bearing from Sioux Gateway Airport/Col. Bud Day Field extending from the 6.8-mile radius of the airport to 12 miles northwest of the airport.

Issued in Fort Worth, Texas, on September 9, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–22738 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4074; Airspace Docket No. 15–AWP–16]

Amendment of Class E Airspace, Truckee, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface area airspace and modifies Class E airspace extending upward from 700 feet above the surface at Truckee-Tahoe Airport, Truckee, CA, to increase safety and enhance existing instrument flight rules (IFR) operations in the immediate vicinity of the airport.

DATES: Effective 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg Ground Floor Rm W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–366–9826. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Truckee-Tahoe Airport, Truckee, CA.

History

On December 18, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 700 feet above the surface at Truckee-Tahoe Airport (80 FR 78988) Docket No. FAA–2015–4074. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received requesting the FAA to establish Class E surface airspace within a 4.2 mile radius to increase safety and enhance existing instrument flight rules (IFR) procedures in the immediate vicinity of the airport. The FAA concurred with the comment and on April 22, 2016, published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to establish Class E surface airspace at Truckee-Tahoe Airport (81 FR 23658) Docket No. FAA–2015–4074. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E surface area airspace within a 4.2-mile radius of Truckee-Tahoe Airport, Truckee, CA. Also, this action modifies Class E airspace extending upward from 700 feet above the surface to within a 4.2-mile radius of the airport, with segments extending from the 4.2-mile radius to 19 miles north and 16.5 miles northwest of the airport, and removes reference to Homewood Seaplane Base, which is no longer operational.

Airspace modification is necessary to ensure the safety and management of standard instrument approach and departure procedures for IFR operations at the airport, with a minimum degree of airspace restriction.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP CA E2 Truckee, CA [New]

Truckee-Tahoe Airport, CA
(Lat. 39°19′12″ N., long. 120°08′22″ W.)

That airspace extending upward from the surface within a 4.2-mile radius of Truckee-Tahoe Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AWP CA E5 Truckee, CA [Modified]

Truckee-Tahoe Airport, CA
(Lat. 39°19′12″ N., long. 120°08′22″ W.)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of Truckee-Tahoe Airport, and within 2 miles each side of the Truckee-Tahoe Airport 015° bearing extending from the 4.2-mile radius to 19 miles north of the airport, and within 2 miles each side of the airport 328° bearing extending from the 4.2-mile radius to 16.5 miles northwest of the airport.

Issued in Seattle, Washington, on August 16, 2016.

Richard Roberts,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–22726 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0742; Airspace Docket No. 14–ASW–5]

Establishment of Class D and E Airspace; Brookshire, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Brookshire, TX, to accommodate the new air traffic control tower at Houston Executive Airport. The FAA is taking this action for the safe and efficient use of the airspace to contain Instrument Flight Rule (IFR) arrival and departure operations at the airport.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 1–800–647–5527, or 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Houston Executive Airport, Brookshire, TX.

History

On March 28, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class D and Class E Airspace at Houston Executive Airport, Brookshire, TX (81 FR 17114) Docket No. FAA–2014–0742. Houston Executive Airport opened an operating control tower October 1, 2014. Federal regulations (14 CFR 91.126, 91.127, and 91.129) establish airspace requirements around an operating tower. Interested parties were invited to participate in three informal meetings with the local community held on June 17, June 18, and December 15, 2015, during the course of establishing this airspace, and in this rulemaking effort by submitting written comments on the proposal to the FAA. 146 comments were received by the end of the comment period May 12, 2016. An additional five comments were received after the comment period (one having 322 signatures on a petition opposing the upper altitude limit of 2,700 feet MSL; the petition supports 2,000 feet MSL as acceptable and safer). One commenter requested to withdraw his request. Of the 150 comments, many voiced opinions on different aspects of the proposal as described in more detail below.

Summary of Comments

The FAA received multiple comments from 150 commenters that have been grouped to reflect general subject areas. The groups are categorized as follows;

1. Support of the Class D proposal at 2,500 feet
2. Support of the Class D airspace at 2,000 feet
3. Support of the Class D proposal at 1,700 feet
4. Support for Class D at 2,500 but with Full Circle (4 miles) Airspace without cutout for Sport Flyers Airport
5. Concerns of east-west VFR corridor compression
6. Increase airspace to match Class B airspace
7. Support for Class E airspace only
8. No support for any change to the present airspace allocation
9. Airspace compression in the northeast quadrant under Class B

1. Comment: Support of the Class D proposal at 2,500 feet.

Fifty-one comments supported the proposal, as is, with a top of 2,500 feet MSL. The positive comments ranged from support of the proposal at 2,500 feet MSL to extending and expanding controlled airspace to 2,700 feet MSL. One commenter proposed to increase the upper limit to 2,700 feet MSL. There were a variety of reasons cited in support of the proposal, including the following:

(a) Confusing to have an air traffic control tower but no Class D airspace surrounding the airport. Establishing class D airspace on the FAA sectionals charts will better identify the air traffic control tower to our transient and overflying aircraft.

(b) The air traffic control tower will enhance the safety of the operations and support the continued growth of the airport. Standard clearance from Houston Executive Airport is to maintain heading to 2,000 feet. Don't want aircraft at 2,100 feet. Aircraft transitioning along I–10 are in the direct flight path of departing traffic off TME RWY 18. Aircraft flying over I–10 at 2,000 feet without communicating with the tower could easily result in mid-air collision with departing traffic.

(c) Limiting airspace to 2,000 feet will only encourage pilots to transition the airspace with no communication, which is dangerous.

(d) A few miles north of the airport the Class B airspace begins at 3,000 feet but the majority of the Class B area over the airport is 4,000 feet.

(e) Simply requesting a transition to the tower will make everyone aware of the transitioning aircraft.

(f) The airspace is usually congested with pilots landing or departing Houston Executive Airport or nearby airports and pilots flying VFR along I–10 at 2,500 feet Class D ceiling is the ceiling pilots have been taught to fly.

(g) Should declare the full circle of 4 NM radius as Class D, including surface to 2,700 feet MSL as done at KHY, KAFW, KFWS, KADS.

(h) The rule if adopted would make the controlled airspace around Houston Executive Airport consistent with comparable towered airfields in the U.S. Sugarland and Conroe were given higher ceiling altitudes than 2,500 feet.

(i) Houston Executive Airport is only airport on the west side of Houston on the I–10 corridor with the ability to handle large cabin class aircraft and a runway length of 6,610 feet.

(j) Not true that having the top of the Class D airspace at 2,500 feet "squeezes VFR aircraft into a narrow band." It is a simple matter to call Houston Executive Tower and coordinate a clearance to transit the Class D airspace or call Houston Approach and get a clearance to transit through the Class B airspace. Support for Class D Airspace, but radar is necessary.

FAA response: An operating tower that meets 14 CFR part 91 regulations is entitled to the establishment of airspace around the tower. Houston Executive Airport (TME) became operational on October 1, 2014. Unless otherwise authorized or required by ATC, 14 CFR 91.126 and FAA Order 7400.2 states that no person may operate an aircraft to, from, or through, an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4-nautical miles from the airport, up to and including 2,500 feet AGL.

Although the FAA initially considered a top altitude of 2,700 feet, based on feedback from the first informal meeting and considerations for the safe and efficient use of airspace, the FAA determined that 2,500 feet, as provided in 14 CFR 91.126, is an appropriate altitude for the operations at the airport based on further information received from informal meetings, radar operating practices, and surveillance equipment. The airspace was tailored to provide minimum inconvenience while optimizing safety. Radar equipment is not a requirement for a control tower. This particular tower is a Non Federal Contract Tower; the FAA is not responsible for providing this type of equipment. Currently, airport traffic activity does not meet the threshold for establishing a radar environment.

2. *Comment:* Support of the Class D airspace at 2,000 feet.

Seventy-six comments opposed the 2,500-foot top and another 322 signed a late-filed petition opposing the altitude of 2,500 feet. This group of 398 did support the creation of the airspace if the top altitude was 2,000 feet MSL. They said reducing tower coordination with a 2,000-foot altitude, and allowing for more separation of airspace between Class B and Class D, would provide a greater and safer transition for aircraft flying along Houston's east/west corridor.

Some of the reasons for limiting top of airspace to 2,000 included:

(a) Other airports (DWH, HQZ, GKY, and SGR) have a top altitude of 2,000 feet.

(b) A 2,500 foot MSL will severely restrict approaches and departures at IWS.

(c) A 2,000 foot ceiling or lower could lessen the effect on the KIWS traffic located 12 NM E of TME, which has a high proportion of VFR and sport pilot traffic. Most IFR departures from KIWS (Runway 15) are cleared to enter controlled airspace heading 270 degrees at 2,000 feet.

(d) Industry standard for Class D is a tower with a 4-NM radius and 2,000 feet MSL.

(e) The most commonly used altitudes are around 1,500 feet; this ensures clearance along the entire route of class B at 2,000 feet and 1000 feet minimum altitude over densely populated terrain. It is also common for westbound traffic to stay just north of I–10 and east-bound traffic stays south of I–10. Much of this VFR traffic doesn't want to communicate with the KTME tower. The wisdom of providing only 500 feet of space between the top of class D and the base of Class B (3,000 feet MSL) within two Victor Airways is in question. By establishing the upper limit of the Class D Airspace to 2,000 feet MSL, pilots would have a 500-foot separation from traffic in both Class B and Class D airspace, instead of only 250 feet separation under the proposal.

FAA response: Transiting VFR aircraft are able to fly through this airspace at 2,000 feet by establishing radio communications and receiving approval by the tower based on the air traffic situation. The same aircraft can fly over the airspace at 2,501 feet without communicating with the tower. The potential for aircraft to be departing Houston Executive Airport and climbing to 2,000 feet with aircraft overflying the same area at 2,001 feet does not provide an adequate safety net. Although there was a comment that Sugar Land Airport had a 2,000 foot top altitude, a review of this comment reveals a top altitude up to, but not including 2,600 feet. David Wayne Hooks Airport does have up to but not including a 2,000 foot top altitude; however, this airport underlies Class B airspace that begins at 2,000 feet. An IFR exit to the west of DWH is capped at 2,000 feet. In making its decision, the FAA reviewed the operations at the airport, informal meeting notes, radar operating practices, and surveillance equipment. With respect to the comment about victor airways, they are in a small section of the class D footprint. Approximately 10 percent underlie Class B Shelf at 3,000 feet. Controlled traffic on V–68 and V–222 will be at 3,000 feet or higher. VFR aircraft are knowledgeable about these airways and are to maneuver themselves to be clear of other aircraft, see and avoid. The airspace was tailored to provide minimum inconvenience while optimizing safety. The FAA has determined that 2,500 feet is an appropriate altitude to enhance safety and allow flexibility to the VFR pilot.

3. *Comment:* Support of the Class D proposal at 1,700 feet.

One commenter supported Class D airspace with an altitude of 1,700 feet.

FAA response: 14 CFR 91.129 sets minimum altitudes when operating in Class D airspace, unless otherwise required, by the distance from cloud criteria; each pilot of a turbine-powered airplane and each pilot of a large airplane must climb to an altitude of 1,500 feet above the surface as rapidly as possible. The FAA has determined that 2,500 feet is an appropriate altitude to enhance safety and allow flexibility to the VFR pilot.

4. *Comment:* Support for Class D at 2,500 feet but with Full Circle (4 miles) Airspace without Cutout for Sport Flyers Airport.

FAA response: The informal meetings with the community resulted in reducing the size of the proposed Class D to its current cutout shape. This proposal reduces the allowed 4-nautical mile radius around TME to assist the operators transitioning in and out of Sport Flyers Airport without the need of establishing radio communications with TME. The proposed cutout also allows for accommodation of a private airstrip to the southwest of TME. This cutout complies with established rules in FAA Order 7400.2K Chapter 17–2–3, SATELLITE AIRPORTS, paragraph a. Using shelves and/or cutouts to the extent practicable, exclude satellite airports from the Class D airspace area.

5. *Comment:* Concerns of east-west VFR corridor compression.

Forty-eight comments were received as to this loss of airspace and to the creation of airspace above 2,000 feet as a safety issue, having a major impact on the VFR community. They commented that the east/west corridor along I–10 has long been a familiar route for VFR pilots transitioning through the airspace for the last thirty years; they enjoy the visual reference and not having to communicate with small airports at the accustomed altitude of 2,000 feet. Comments included:

(a) Compressing transient VFR traffic along I–10 corridor to 500′ vertically will increase risk of collision.

(b) Will make flying cross country more stressful.

(c) Proposed airspace is dangerous because it sits at the mouth or exit of the VFR corridor between the two huge Class B airspaces over Houston.

(d) KTME does not need Class D because it does not have a lot of traffic and it is not for the common good of all.

(e) Proposed airspace significantly reduces usable airspace for the majority to accommodate a few elite jets; Safety should be for the most pilots, not the richest. There are only a few IFR days where Class D might be beneficial; but there are many VFR flyers.

(f) Class D should not be implemented until tower existence is published.

(g) Will cause transition to South and cause flights and noise over residential areas of Katy, Cinco Ranch, and Brookshire. Should consider these alternatives: (1) No Class D; (2) Class D ceiling 1,500 AGL rather than 2,000 AGL; (3) Make southern border of Class D align with northern edge of I–10.

(h) VFR traffic will deviate around the south side putting west and east-bound traffic on potential collision course for the following reasons:

(1) By establishing Class D around KTME, this VFR traffic will choose to deviate around the south side of the proposed Class D. That will put west- and east-bound traffic on a potential collision course. Although in practice VFR traffic is often at 1,500′ even this far out west, it could fly at a higher altitude. However, even the Houston VFR flyway chart encourages VFR traffic to stay below 2,500′ in this area. Adhering to that recommended altitude would still require a deviation south around the proposed KTME Class-D, so the safety concern noted above still stands.

(2) VFR aircraft flying in opposite directions would normally have a 1,000 ft. separation between themselves (whole altitudes + 500 ft.). With only 1,500 foot above TME (2,500 ft to 4,000 ft) . . . what are the procedures for safe separation??? IFR are at the whole altitudes! So . . . If TME Class D has a ceiling of 2,500 ft, 2,600 ft to 3,900 ft is all that is left! In such a case. Only one VFR altitude is available [Eastbound: 3,500 ft] [FAR Part 91.159] and that leaves Westbound VFR traffic with dangerous choices. VFR traffic flying over TME at 2,100 with a 2,000 ft. corridor above TME is less likely than VFR traffic using 2,600 or 3,900 in a 1,500 ft. corridor. Westbound VFR won't have any option that will give them more than 400 ft. separation from Eastbound VFR or IFR traffic.

(i) Would have to drop 1,500 feet in order to land at West Houston Airport when coming from the West. Would we be better off with this traffic flying over Houston at 10,000 feet or around the Class B airspace?

(j) This would interfere with all the commercial flights coming into IAH and HOU.

(k) Directly effects VFR traffic on Victor airways.

(l) Rather than speak with the tower at KTME, aircraft will in all likelihood divert either north or south. This then increases over flights to X09 and the Gloster (1XO7) skydive location JIM MAIM.

(m) Eliminates practice area used by local pilots.

(n) IFR has no priority over VFR in uncontrolled airspace.

(o) Same result can be achieved by Class E controlled airspace to the ground, not just at nighttime like in this proposal, but for 24/24 instead of a daytime Class D. I would therefore propose to change the controlled airspace for KTME to Class E 24h instead of day Class D/Night Class E.

(p) IFR pilots could use Hobby.

(q) IFR pilots have the same obligation as VFR pilots to "See and Avoid" when in VMC.

(r) Aircraft diverting either north or south would put aircraft closer to the instrument approaches for KTME.

FAA response: The term corridor is generally used for the portion of I–10 that is underneath the Class B airspace; when the Class B airspace terminates, so does the corridor. It is important to note that the portion of the east/west I–10 corridor that lies inside the Class D does not underlie Class B. The VFR operation can still occur along I–10 either by circumnavigating the area approximately 14 flying miles or by establishing radio communications with the operating tower according to 14 CFR 91.126 or (if Class E airspace) 14 CFR 91.127. Since this area is not charted and the opening of TME was not widely known, the FAA has provided relief during this period by waiving the requirement to establish radio communications with the control tower during the airspace rulemaking process. 14 CFR 91.129 set minimum altitudes when operating in Class D airspace, unless otherwise required by the distance from cloud criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane must climb to an altitude of 1,500 feet above the surface as rapidly as possible. The distance needed to climb to 1,500 feet does not make the option to cap the southern border at I–10 feasible. VFR aircraft departing to and from West Houston Airport could have a normal climb/descent profile by communicating with TME tower and receiving permission to transition through the airspace; this should not be approved if aircraft activity is in the same area. This would maintain or increase safety from today's environment.

This airspace action is not expected to cause any potentially significant environmental impacts, including no significant noise impacts. No extraordinary circumstances exists that warrant preparation of an environmental assessment.

When operating in VFR weather conditions, it is the pilot's responsibility to be vigilant so as to see and avoid other aircraft (14 CFR 91.113(a)). The Aeronautical Information Manual (AIM) recommends that for aircraft 8,000 feet AGL and below, extra vigilance be maintained and that monitoring an appropriate control frequency is to the VFR pilot's advantage to "get the picture of traffic in the area." VFR pilots are to see and avoid other aircraft and to be extremely vigilant in congested VFR areas and Victor airways. Once again, an operating tower that meets the requirements of FAA Order 7400.2K, Chapter 17, is authorized Class D airspace. This proposal will have Class D airspace during tower operating hours and Class E surface area airspace during non-operating hours. The proposed altitude of 2,500 does not interfere with commercial traffic landing or departing IAH or HOU. The formal establishment of Class D airspace will allow for charting of the airspace dimensions and altitude which will provide notice to pilots to communicate or circumnavigate this area. The pilot will not be affected if the aircraft flies above 2,500 feet. The FAA acknowledges the inconvenience to the VFR pilot of flying at or above 2,500 feet and establishing radio communications with control towers. 14 CFR 91.126, Class G airspace; 14 CFR 91.127, Class E airspace require communication with the operating control tower (TME) unless otherwise authorized by ATC. The FAA does not agree that altitude compression will be constrained in this area since the floor of the Class B airspace is southeast of the proposed Class D airspace.

6. *Comment:* Three commenters stated that the proposed rulemaking (NPRM) should be to establish Class B Airspace in the Brookshire, TX area, instead of Class D and Class E Airspace. The commenters preferred to have the entire airspace controlled by the FAA. Some of the reasons cited in favor of Class B airspace were:

(a) A few miles north of the airport, the Class B airspace begins at 3,000 feet but the majority of the Class B area over the airport is 4,000 feet.

(b) Raising the top to meet the Class B further removes any confusion to transient traffic.

(c) TME, with its physical location near Houston's Corporate Energy Corridor and ample 6,610′ × 100′ runway, is attracting an ever growing number of larger and faster aircraft (turboprops and jets).

(d) Class D airspace tends to have less recreational flyers and experimental traffic that tend to increase immediate airport traffic congestion and noise with constant circling for touch and goes, etc.

FAA response: This airport and its location do not meet criteria for Class B airspace.

7. *Comment:* Supports Class E airspace only.

Five comments received supported the proposal of 2,500 feet if the airspace would be classified as Class E airspace.

FAA response: The requirement for VFR aircraft to establish radio communications is still in effect for Class G and/or Class E airspace; 14 CFR 91.126 and 14 CFR 91.127. Establishing the proposed Class D airspace will reduce the overall airspace dimensions. Approval to transit the area is still required; the benefit will be that all aircraft will have access to VFR charts and the airspace would be depicted.

14 CFR 91.127, Operating on or in the vicinity of an airport in Class E airspace, states:

(c) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with 14 CFR 91.185.

8. *Comment:* No support for any change to the present airspace allocation.

Thirty-one comments received rejected the proposal entirely. An immediate return to the status quo was requested based on the long standing operations in this area. Additionally, many commenters cited the east/west I–10 corridor and the compression of the VFR navigable air space in the northeast affected area as a concern. The majority of comments provided for an alternate choice of a top altitude of 2,000 feet.

FAA response: The TME control tower opened October 1, 2014, and is operational; the status quo can no longer be maintained. The FAA is complying with all appropriate regulations.

9. *Comment:* Airspace compression in the northeast quadrant under Class B.

Twenty comments received concerned the compression of navigable airspace under Class B and Class D airspace around TME. Cited were safety concerns for VFR aircraft to squeeze into an already congested airspace. The concerns were departures of airports underneath the Class B, practice areas for student training, and the airspace compression along the east west I–10 corridor.

FAA response: The FAA has reviewed these concerns and agrees this is a compression of airspace with the establishment of Class D airspace. The proposal notes that 10 percent of the Class D footprint sits below the Class B shelf at 3,000 feet. The east/west I–10 corridor underlies Class B airspace; however, the portion of I–10 that does underlie the proposed Class D does not underlie Class B airspace. During the informal meetings this factor was taken into consideration and resulted in the proposed airspace being lowered from 2,700 feet to 2,500 feet to allow for more airspace. The compression to the northeast underlying Class B airspace is not considered the VFR corridor. The FAA believes this to have minimal impact on those aircraft that would have to fly around or over the proposed airspace.

The tower at Houston Executive Airport is established and the Class D and E airspace areas are being provided according to federal regulations. The Class D proposal to reduce the allowed footprint of the airspace provides for safe and efficient use of airspace. Class D enhances safety by setting VFR weather minima specified in 14 CFR 91.155 and through the communications and other requirements in 14 CFR 91.129 (and 14 CFR 91.127 for E airspace). Once Class D airspace is charted, the information is accessible to all pilots. The FAA understands the concerns of the commenters. However, the FAA chose the upper limit of the airspace at 2,500 feet to establish higher weather minima for VFR aircraft, transitioning above the airspace thus restricting access to VFR flights in the airspace while IFR operations are in progress. VFR aircraft transitioning at 2,000 feet through the airspace will still be allowed to do so as long as radio communications are established with the tower prior to the aircraft entering the Class D airspace, and no additional conflicts with other airspace users arise.

Class D and Class E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D airspace, and Class E surface area airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Houston Executive Airport, excluding that airspace west and northwest, to accommodate the establishment of an airport traffic control tower. This action reduces the allowed 4 nautical mile radius around Houston Executive Airport to assist the operators transitioning in and out of Sport Flyers Airport without the need of establishing radio communications with Houston Executive Airport. The proposed cutout also allows for accommodation for a private airstrip to the southwest of Houston Executive Airport. This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 also establishes Class E airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Houston Executive Airport, to accommodate standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class D and E airspace areas are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

ASW TX D Brookshire, TX [New]

Houston Executive Airport, TX
(Lat. 29°48′18″ N., long. 95°53′52″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL bounded by a line beginning at lat. 29°46′44″ N., long. 95°58′06″ W., to lat. 29°47′35″ N., long. 95°55′49″ W., to lat. 29°51′55″ N., long. 95°55′52″ W., thence clockwise along the 4-mile radius of Houston Executive Airport to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

ASW TX E2 Brookshire, TX [New]

Houston Executive Airport, TX
(Lat. 29°48′18″ N., long. 95°53′52″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL bounded by a line beginning at lat. 29°46′44″ N., long. 95°58′06″ W., to lat. 29°47′35″ N., long. 95°55′49″ W., to lat. 29°51′55″ N., long. 95°55′52″ W., thence clockwise along the 4-mile radius of Houston Executive Airport, to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

ASW TX E5 Brookshire, TX [New]

Houston Executive Airport, TX
(Lat. 29°48′18″ N., long. 95°53′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Houston Executive Airport.

Issued in Fort Worth, TX, on September 14, 2016.

Vonnie L. Royal,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–22723 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–5388; Airspace Docket No. 16–ACE–4]

Revocation of Class E Airspace; Alliance, NE; and Amendment of Class E Airspace for the Following Nebraska Towns; Albion, NE; Alliance, NE; Gothenburg, NE; Holdrege, NE; Imperial, NE; Lexington, NE; and Millard Airport, Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E surface area airspace at Alliance Municipal Airport, Alliance, NE; and modifies Class E airspace extending upward from 700 feet above the surface at Albion Municipal Airport, Albion, NE; Alliance Municipal Airport, Alliance, NE; Quinn Field, Gothenburg,

NE; Brewster Field Airport, Holdrege, NE; Imperial Municipal Airport, Imperial, NE; Jim Kelly Field, Lexington, NE; and Millard Airport, Omaha, NE. Decommissioning of non-directional radio beacons (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action also updates the geographic coordinates for Quinn Field, Imperial Municipal Airport, and Jim Kelly Field to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11A and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes Class E surface area airspace at Alliance Municipal Airport, Alliance, NE; and modifies Class E airspace extending upward from 700 feet above the surface at Albion Municipal Airport, Albion, NE; Alliance Municipal Airport; Quinn Field, Gothenburg, NE; Brewster Field Airport, Holdrege, NE; Imperial Municipal Airport, Imperial, NE; Jim Kelly Field, Lexington, NE; and Millard Airport, Omaha, NE.

History

On May 3, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to remove Class E surface area airspace at Alliance Municipal Airport, Alliance, NE; and modify Class E airspace extending upward from 700 feet above the surface at Albion Municipal Airport, Albion, NE; Alliance Municipal Airport; Quinn Field, Gothenburg, NE; Brewster Field Airport, Holdrege, NE; Imperial Municipal Airport, Imperial, NE; Jim Kelly Field, Lexington, NE; and Millard Airport, Omaha, NE. (81 FR 26503) Docket No. FAA–2016–5388. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes Class E surface area airspace at Alliance Airport, Alliance, NE., as the airspace is no longer needed. This action also modifies Class E airspace extending upward from 700 feet above the surface at the following airports:

Within a 6.7-mile radius of Albion Municipal Airport, Albion, NE., with segments extending from the 6.7-mile radius to 9,7 miles southeast, and 6.7 miles northwest, of the airport;

Within a 7.2-mile radius of Alliance Municipal Airport, Alliance, NE;

Within a 7.3-mile radius of Quinn Field, Gothenburg, NE., with segments extending from the 7.3-mile radius of the airport to 11.1 miles northeast, and 7.3 miles southwest, of the airport;

Within a 6.5-mile radius of Brewster Field Airport, Holdrege, NE;

Within a 6.5-mile radius of Imperial Municipal Airport, Imperial, NE;

Within a 6.5-mile radius of Jim Kelly Field, Lexington, NE;

And within a 6.7-mile radius of Millard Airport, Omaha, NE.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at the above airports for the safety and management of the standard instrument approach procedures for IFR operations at the airports. The geographic coordinates for Quinn Field, Imperial Municipal Airport, and Jim Kelly Field are updated to be in concert with the FAAs aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Alliance, NE [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Albion, NE [Amended]

Albion Municipal Airport, NE
(Lat. 41°43′43″ N., long. 98°03′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Albion Municipal Airport, and within 2.6 miles each side of the 154° bearing from the airport extending from the 6.7-mile radius to 9.7 miles southeast of the airport, and within 3.7 miles each side of the 334° bearing from the airport extending from the 6.7-mile radius to 10.1 miles northwest from the airport.

* * * * *

ACE NE E5 Alliance, NE [Amended]

Alliance Municipal Airport, NE
(Lat. 42° 03′12″ N., long. 102°48′14″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Alliance Municipal Airport.

* * * * *

ACE NE E5 Gothenburg, NE [Amended]

Gothenburg, Quinn Field, NE
(Lat. 40°55′32″ N., long. 100°08′48″ W.)

That airspace extending upward from 700 feet above the surface within an 7.3-mile radius of Quinn Field, and within 4 miles each side of the 030° bearing from the airport extending from the 7.3-mile radius to 11.1 miles northeast of the airport, and within 4 miles each side of the 218° bearing from the airport extending from the 7.3-mile radius to 10.5 miles southwest of the airport.

* * * * *

ACE NE E5 Holdrege, NE [Amended]

Holdrege, Brewster Field Airport, NE
(Lat. 40°27′08″ N., long. 99°20′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Brewster Field Airport.

* * * * *

ACE NE E5 Imperial, NE [Amended]

Imperial Municipal Airport, NE
(Lat. 40°30′37″ N., long. 101°37′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Imperial Municipal Airport.

* * * * *

ACE NE E5 Lexington, NE [Amended]

Lexington, Jim Kelly Field, NE
(Lat. 40°47′26″ N., long. 99°46′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jim Kelly Field.

* * * * *

ACE NE E5 Omaha, Millard Airport, NE [Amended]

Omaha, Millard Airport, NE
(Lat. 41°11′46″ N., long. 96°06′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Millard Airport.

Issued in Fort Worth, Texas, on September 9, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–22736 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0726; Airspace Docket No. 14–ASO–9]

Amendment of Class D and E Airspace, and Revocation of Class E Airspace; Troy, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and E airspace, and removes Class E airspace designated as an extension at Troy Municipal Airport at N. Kenneth Campbell Field (formerly Troy Municipal Airport), Troy, AL. The Troy VHF Omnidirectional Radio Range (VOR) has been decommissioned, therefore Class E extension airspace is no longer needed, and new Standard Instrument Approach Procedures have been developed, requiring adjustments in Class D airspace and Class E airspace extending upward from 700 feet above the surface at the airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport and recognizes the name change of the airport.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 1–800–647–8927, or 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace at Troy Municipal Airport at N. Kenneth Campbell Field, Troy, AL.

History

On June 21, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D and Class E airspace extending upward from 700 feet above the surface at Troy Municipal Airport at N. Kenneth Campbell Field, formerly Troy Municipal Airport, Troy, AL, (81 FR 40213) Docket No. FAA–2014–0726, as new Standard Instrument Approach Procedures have been developed requiring airspace redesign. Additionally, Class E airspace designated as an extension to Class D surface area would be removed due to the decommissioning of the Troy VOR and cancellation of the VOR approaches. The geographic coordinates of the airport would be amended to coincide with the FAA's aeronautical database. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in paragraphs 5000, 6004 and 6005, respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Troy Municipal Airport at N. Kenneth Campbell Field and within 2-miles each side of a 070° bearing from the airport to 11.5-miles northeast of the airport, and within 2-miles each side of a 253° bearing from the airport to 11.3-miles southwest of the airport. Additionally, Class E airspace designated as an extension to Class D surface area is removed due to the decommissioning of the Troy VOR and cancellation of the VOR approaches. The geographic coordinates of the airport are amended to coincide with the FAAs aeronautical database. Also, this action recognizes the name change of Troy Municipal Airport at N. Kenneth Campbell Field (formerly Troy Municipal Airport).

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO AL D Troy, AL [Amended]

Troy Municipal Airport at N. Kenneth Campbell Field, AL
(Lat. 31°51′36″ N., long. 86°00′50″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 5-mile radius of Troy Municipal Airport at N. Kenneth Campbell Field. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

ASO AL E4 Troy, AL [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Troy, AL [Amended]

Troy Municipal Airport at N. Kenneth Campbell Field, AL
(Lat. 31°51′36″ N., long. 86°00′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Troy Municipal Airport at N. Kenneth Campbell Field and within 2-miles each side of a 070° bearing from the airport to 11.5-miles northeast of the airport, and within 2-miles each side of a 253° bearing from the airport to 11.3-miles southwest of the airport.

Issued in College Park, Georgia, on September 7, 2016.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–22735 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8816; Airspace Docket No. 16–AEA–5]

Amendment of Class E Airspace, Ithaca, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace Designated as an Extension at Ithaca Tompkins Regional Airport, Ithaca, NY, by updating the geographic coordinates of the Ithaca VHF omnidirectional range/distance measuring equipment, (VOR/DME), and the airport, as well as changing the airport name. This is an administrative change and does not affect the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Ithaca Tompkins Regional Airport, Ithaca, NY.

History

In a review of the airspace for Ithaca Tompkins Regional Airport (formerly Tompkins County Airport), Ithaca, NY, the FAA found the airport name and geographic coordinates for the airport and the Ithaca VOR/DME, as published in FAA Order 7400.11A, Airspace Designations and Reporting Points, do not match the FAA's charting information for Class E Airspace Designated as an Extension to a Class D Surface Area.

Class E airspace designations are published in paragraph 6004 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace designated as an extension at Ithaca Tompkins Regional Airport, Ithaca, NY. A minor adjustment to the geographic coordinates of the airport and the Ithaca VOR/DME is made to be in concert with the FAA's aeronautical database, as well as a name change from Tompkins County Airport to Ithaca Tompkins Regional Airport.

This is an administrative change and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective

September 15, 2016, is amended as follows:

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AEA NY E4 Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N., long. 76°27′31″ W.)
Ithaca VOR/DME
(Lat. 42°29′42″ N., long. 76°27′35″ W.)

That airspace extending upward from the surface from the 4-mile radius of the Ithaca Tompkins Regional Airport to the 5.7-mile radius of the airport; clockwise from the 329° bearing to the 081° bearing from the airport; that airspace from the 4-mile radius of Ithaca Tompkins Regional Airport to the 8.7-mile radius of the airport extending clockwise from the 081° bearing to the 137° from the airport; that airspace from the 4-mile radius of Ithaca Tompkins Regional Airport; to the 6.6-mile radius of the airport, extending clockwise from the 137° bearing to the 170° bearing from the airport; that airspace from the 4-mile radius to the 5.7-mile radius of the Ithaca Tompkins Regional Airport, extending clockwise from the 170° bearing to the 196° bearing from the airport; and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of Ithaca Tompkins Regional Airport to 7.4 miles northwest of the Ithaca VOR/DME. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

Issued in College Park, Georgia, on September 7, 2016.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–22741 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. FDA–2016–N–2656]

Medical Devices; Ophthalmic Devices; Classification of Strabismus Detection Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the strabismus detection device into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the strabismus detection device's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective September 22, 2016. The classification was applicable on June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Elvin Ng, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2431, Silver Spring, MD 20993–0002, 240–402–4662, *elvin.ng@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of "low-moderate risk" or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA shall classify the device by written order within 120 days. This classification will be the initial classification of the device.

On December 11, 2013, RebiScan, Inc., submitted a request for classification of the Pediatric Vision Scanner under section 513(f)(2) of the FD&C Act.

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 8, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 886.1342.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a strabismus detection device will need to comply with the special controls named in this final order.

The device is assigned the generic name strabismus detection device, and it is identified as a prescription device designed to simultaneously illuminate both eyes with polarized light for automated detection of strabismus by analyzing foveal birefringence properties.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—STRABISMUS DETECTION DEVICE RISKS TO HEALTH AND MITIGATION MEASURES

Identified risk	Mitigation measures
Diagnostic risks (false positives, false negatives, no output)	• Clinical performance testing; • Non-clinical performance testing; • Software verification, validation and hazard analysis; and • Labeling.
Electromagnetic interference with other devices	• Electromagnetic compatibility (EMC) testing; and • Labeling.
Electrical shock	• Electrical safety testing; and • Labeling.
Ocular Light Toxicity	• Optical radiation safety testing; • Software verification, validation and hazard analysis; and • Labeling.
Use Error	• Labeling.

FDA believes that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

Strabismus detection devices are not safe for use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109, *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the strabismus detection device they intend to market.

II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding the quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 886.1342 to subpart B to read as follows:

§ 886.1342 Strabismus detection device.

(a) *Identification.* A strabismus detection device is a prescription device designed to simultaneously illuminate both eyes with polarized light for automated detection of strabismus by analyzing foveal birefringence properties.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must demonstrate the device performs as intended under anticipated conditions of use. Testing must be conducted in a representative patient population and clinical setting for the indicated use. Demonstration of clinical performance must include assessment of sensitivity and specificity compared to a clearly defined reference standard (*e.g.*, comprehensive ophthalmological examination comprises age-appropriate visual acuity testing, examination of the external ocular adnexae and orbit, anterior segment evaluation, extraocular motility evaluation, assessment of stereopsis, cycloplegic refraction, and dilated fundus examination).

(2) Non-clinical performance testing must demonstrate the device performs as intended under anticipated conditions of use. The following technical characteristics must be evaluated:

(i) Verification of lowest detectable amount of deviation; and

(ii) Validation of the accuracy and precision at the lowest detectable amount of deviation.

(3) Software verification, validation, and hazard analysis must be performed.

(4) Optical radiation safety testing must demonstrate the device is safe per the directions for use.

(5) Performance testing must demonstrate the electromagnetic compatibility of the device.

(6) Performance testing must demonstrate the electrical safety of the device.

(7) Labeling must include the following:

(i) Summaries of non-clinical and clinical performance testing;

(ii) Instructions on how to correctly use and maintain the device;

(iii) Instructions and explanation of all user-interface components; and

(iv) Information related to electromagnetic compatibility and optical radiation classification.

Dated: September 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22801 Filed 9–21–16; 8:45 am]

BILLING CODE 4164–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 240

USAID Sovereign Loan Guarantees—Standard Terms and Conditions

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This regulation prescribes the procedures and standard terms and conditions applicable to loan guarantees to be issued for the benefit of Ukraine.

DATES: Effective September 21, 2016.

FOR FURTHER INFORMATION CONTACT: D. Bruce McPherson, Office of the General Counsel, U.S. Agency for International Development, Washington, DC 20523–6601; tel. 202–712–1611, fax 202–216–3055.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 7034(o)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113), the United States of America, acting through the U.S. Agency for International Development, may issue certain loan guarantees applicable to sums borrowed by Ukraine (the "Borrower"), not exceeding an aggregate total of U.S. $1 billion in principal amount. Upon issuance, the loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings and the full faith and credit of the United States of America shall be pledged for the full payment and performance of such guarantee obligations.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory review under Executive Order 12866 because it involves a foreign affairs function of the United States. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply.

List of Subjects in 22 CFR Part 240

Foreign aid, Foreign relations, Guaranteed loans, Loan programs-foreign relations.

Authority and Issuance

■ Accordingly, part 240 is added to title 22, chapter II, of the Code of Federal Regulations, to read as follows:

PART 240—SOVEREIGN LOAN GUARANTEE—STANDARD TERMS AND CONDITIONS

Sec.

240.1 Purpose.
240.2 Definitions.
240.3 The Guarantee.
240.4 Guarantee eligibility.
240.5 Non-impairment of the Guarantee.
240.6 Transferability of Guarantee; Note Register.
240.7 Fiscal Agent obligations.
240.8 Event of Default; Application for Compensation; payment.
240.9 No acceleration of Eligible Notes.
240.10 Payment to USAID of excess amounts received by a Noteholder.
240.11 Subrogation of USAID.
240.12 Prosecution of claims.
240.13 Change in agreements.
240.14 Arbitration.
240.15 Notice.
240.16 Governing Law.
Appendix A to Part 240—Application for Compensation

Authority: Section 7034(o)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113).

§ 240.1 Purpose.

The purpose of the regulations in this part is to prescribe the procedures and standard terms and conditions applicable to loan guarantees issued for the benefit of the Borrower, pursuant to section 7034(o)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113) (the "Authority"). The loan guarantees will be issued as provided herein pursuant to a Loan Guarantee Agreement signed on June 3, 2016, between the United States of America and Ukraine (the "Loan Guarantee Agreement"). The loan guarantee will apply to sums borrowed during a period beginning on the date that the Loan Guarantee Agreement enters into force and ending thirty days after such date, not exceeding an aggregate total of one billion United States Dollars ($1,000,000,000) in principal amount. The loan guarantees shall ensure the Borrower's repayment of 100% of principal and interest due under such borrowings. The full faith and credit of the United States of America is pledged for the full payment and performance of such guarantee obligations.

§ 240.2 Definitions.

Wherever used in the standard terms and conditions set out in this part:

Applicant means a Noteholder who files an Application for Compensation with USAID, either directly or through the Fiscal Agent acting on behalf of a Noteholder.

Application for Compensation means an executed application in the form of appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with USAID pursuant to § 240.8.

Borrower means Ukraine.

Business Day means any day other than a day on which banks in New York, NY are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

Date of Application means the date on which an Application for Compensation is actually received by USAID pursuant to § 240.15.

Defaulted Payment means, as of any date and in respect of any Eligible Note, any Interest Amount and/or Principal Amount not paid when due.

Eligible Note(s) means [a] Note[s] meeting the eligibility criteria set out in § 240.4.

Fiscal Agency Agreement means the agreement among USAID, the Borrower and the Fiscal Agent pursuant to which the Fiscal Agent agrees to provide fiscal agency and trust services in respect of the Note[s], a copy of which Fiscal Agency Agreement shall be made available to Noteholders upon request to the Fiscal Agent.

Fiscal Agent means the bank or trust company or its duly appointed successor under the Fiscal Agency Agreement which has been appointed by the Borrower with the consent of USAID to perform certain fiscal agency and trust services for specified Eligible Note[s] pursuant to the terms of the Fiscal Agency Agreement.

Further Guaranteed Payments means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

Guarantee means the guarantee of USAID pursuant to the Authority.

Guarantee Payment Date means a Business Day not more than three (3) Business Days after the related Date of Application.

Interest Amount means for any Eligible Note the amount of interest accrued on the Principal Amount of such Eligible Note at the applicable Interest Rate.

Interest Rate means the interest rate borne by an Eligible Note.

Loss of Investment means, in respect of any Eligible Note, an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application;

(2) Further Guaranteed Payments unpaid as of the Date of Application; and

(3) Interest accrued and unpaid at the Interest Rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

Note[s] means any debt securities issued by the Borrower.

Noteholder means the owner of an Eligible Note who is registered as such on the Note Register.

Note Register means the register of Eligible Notes required to be maintained by the Fiscal Agent.

Person means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Principal Amount means the principal amount of the Eligible Notes issued by the Borrower. For purposes of determining the principal amount of the Eligible Notes issued by the Borrower, the principal amount of each Eligible Note shall be the stated principal amount thereof.

USAID means the United States Agency for International Development or its successor.

§ 240.3 The Guarantee.

Subject to the terms and conditions set out in this part, the United States of America, acting through USAID, guarantees to Noteholders the Borrower's repayment of 100% of principal and interest due on Eligible Notes. Under this Guarantee, USAID agrees to pay to any Noteholder compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder. This Guarantee shall apply to each Eligible Note registered on the Note Register.

§ 240.4 Guarantee eligibility.

(a) Eligible Notes only are guaranteed hereunder. Notes in order to achieve Eligible Note status:

(1) Must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower;

(2) Must contain a certificate of authentication manually executed by the Fiscal Agent whose appointment by the Borrower is consented to by USAID in the Fiscal Agency Agreement; and

(3) Shall be approved and authenticated by USAID by either:

(i) The affixing by USAID on the Notes of a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID; or

(ii) The delivery by USAID to the Fiscal Agent of a guarantee certificate incorporating these Standard Terms and Conditions signed on behalf of USAID by either a manual signature or a facsimile signature of an authorized representative of USAID.

(b) The authorized USAID representatives for purposes of the regulations in this part whose signature(s) shall be binding on USAID shall include the USAID Chief and Deputy Chief Financial Officer; Assistant Administrator and Deputy Assistant Administrator, Bureau for Economic Growth, Education and Environment; Assistant Administrator, Bureau for Europe and Eurasia; Director and Deputy Director, Office of Development Credit; and such other individual(s) designated in a certificate executed by an authorized USAID Representative and delivered to the Fiscal Agent. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on USAID that an Eligible Note has been duly executed on behalf of the Borrower and delivered.

§ 240.5 Non-impairment of the Guarantee.

After issuance of a Guarantee, that Guarantee will be an unconditional, full faith and credit obligation of the United States of America, and will not be affected or impaired by any subsequent condition or event. This non-impairment of the guarantee provision shall not, however, be operative with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder is responsible or of which it had knowledge at the time it became a Noteholder. Moreover, the Guarantee shall not be affected or impaired by:

(a) Any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, USAID, the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee; or

(b) The suspension or termination of the program pursuant to which USAID is authorized to guarantee the Eligible Notes.

§ 240.6 Transferability of Guarantee; Note Register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register. USAID shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and USAID shall not be affected by notice to the contrary.

§ 240.7 Fiscal Agent obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal Agent by USAID as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make demand for payment on its behalf under this Guarantee.

§ 240.8 Event of Default; Application for Compensation; payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with USAID an Application for Compensation in the form provided in appendix A to this part. USAID shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than the Guarantee Payment Date. In the event that USAID receives any other notice of an Event of Default, USAID may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with USAID an Application for Compensation in respect of such amount.

§ 240.9 No acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration, in whole or in part, by USAID, the Noteholder or any other party. USAID shall not have the right to pay any amounts in respect of the Eligible Notes other than in accordance with the original payment terms of such Eligible Notes.

§ 240.10 Payment to USAID of excess amounts received by a Noteholder.

If a Noteholder shall, as a result of USAID paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to USAID.

§ 240.11 Subrogation of USAID.

In the event of payment by USAID to a Noteholder under this Guarantee, USAID shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

§ 240.12 Prosecution of claims.

After payment by USAID to an Applicant hereunder, USAID shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and USAID shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 240.13 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of USAID.

§ 240.14 Arbitration.

Any controversy or claim between USAID and any Noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 240.15 Notice.

Any communication to USAID pursuant to this Guarantee shall be in writing in the English language, shall refer to the Ukraine Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by USAID at the Office of Development Credit, Bureau for Economic Growth, Education and Environment, United States Agency for International Development, Washington, DC 20523–0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 240.16 Governing Law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A to Part 240—Application for Compensation

United States Agency for International Development

Washington, DC 20523

Ref: Guarantee dated as of ______, 20__:

Gentlemen: You are hereby advised that payment of $______(consisting of $ ______ of principal, $______ of interest and $______ in Further Guaranteed Payments, as defined in § 240.02 of the Standard Terms and Conditions of the above-mentioned Guarantee) was due on ______, 20__, on $______ Principal Amount of Notes issued by Ukraine (the "Borrower") held by the undersigned. Of such amount $______ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 240.08 of said Guarantee, for payment of $______, representing $______, the Principal Amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on ______ and that remains unpaid, and $______, the Interest Amount on such Note(s) that was due and payable by the Borrower on ______ and that remains unpaid, and $______ in Further Guaranteed Payments,[1] plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of ______ % per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder or Fiscal Agent, as applicable].

All capitalized terms herein that are not otherwise defined shall have the meanings assigned to such terms in the Standard Terms and Conditions of the above-mentioned Guarantee.

[Name of Applicant]
By: ______________________________
Name: ______________________________
Title: ______________________________
Dated: ______________________________

Dated: September 19, 2016.

D. Bruce McPherson,

Attorney Advisor, Office of the General Counsel, U.S. Agency for International Development.

[FR Doc. 2016–22856 Filed 9–21–16; 8:45 am]

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[1] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0890]

Drawbridge Operation Regulation; Red River, Alexandria, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 165 (Jackson Street) Drawbridge across the Red River, mile 88.6, at Alexandria, Louisiana. The deviation is necessary to allow the bridge owner time to adjust the new pinion bearings that are essential to the continued safe operation of the drawbridge. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective without actual notice from September 22, 2016 until 6 p.m., September 30, 2016. For the purposes of enforcement, actual notice will be used from 6 a.m. to 6 p.m., each day, from September 26, 2016 until September 30, 2016.

ADDRESSES: The docket for this deviation, (USCG–2016–0890) is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development requested a temporary deviation for the US 165 (Jackson Street) Drawbridge, across the Red River, mile 88.6, at Alexandria, Louisiana. It has a vertical clearance of 40.0 feet above normal pool in the closed-to-navigation position. The US 165 (Jackson Street) Drawbridge currently operates in accordance with 33 CFR 117.491(b).

This deviation period is from 6 a.m. to 6 p.m., each day, from September 26, 2016 to September 30, 2016 when the draw span will remain in the closed-to-navigation position. During this time the bridge owner will adjust the new pinion bearings that are essential to the continued safe operation of the drawbridge. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received.

The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass this section of the Red River. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so the vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 16, 2016.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2016–22822 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0818]

RIN 1625–AA00

Safety Zone; Columbia River, Sand Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters of the Columbia River within a 500-yard radius of the small boat "Nessy," while in the area of Sand Island, near Chinook, WA, and all involved associated vessels in support of the Double-Crested Cormorant removal operations conducted by the U.S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River, or a designated representative.

DATES: This rule is effective from September 21, 2016 through October 21, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0818 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The U.S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services notified the Coast Guard that they intend to conduct federally permitted removal operations of the Double-Crested Cormorant starting September 21, 2016. In response, on August 23, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Columbia River, Sand Island, WA 81 FR 57507. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended September 12, 2016 we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because such delay would eliminate the safety zone's effectiveness and usefulness in preventing dangers to the boating public associated with the removal operations being conducted using firearms and live ammunition.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. Coast Guard Captains of the Port are granted authority to establish safety zones in 33 CFR 1.05–1(f) for safety purposes as described in 33 CFR part 165.

The Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services will conduct a federally permitted removal operation of the Double-Crested Cormorant starting September 21, 2016. This operation will involve the use of firearms and live ammunition. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the removal operation will be a safety concern for anyone within a 500-yard radius of the small boat "Nessy," while in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W., and any associated support vessel(s). The safety zone is needed to protect personnel and vessels in the navigable waters within the safety zone during the removal operations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 23, 2016. There are two changes in the regulatory text of this rule from the proposed rule in the NPRM. The change in paragraph (a) of the regulation is non-substantive and clarifies the language that describes the area that is designated a safety zone. The change in paragraph (c) of the regulation updates the language regarding assistance from state law enforcement to align with the statute cited.

This rule establishes a safety zone from September 21, 2016, through October 21, 2016. The safety zone will cover all navigable waters of the Columbia River within 500 yards of the small boat "Nessy," and all involved associated support vessels being used by personnel during the removal operation, conducted in the area encompassed by these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W. The 500 yard radius area of the safety zone is intended to protect persons and vessels from the dangerous combined effects of live gunfire, unpredictable animal behavior, and a highly dynamic marine environment characterized by strong tides, river currents and wind. This safety zone will be enforced only when the small boat "Nessy," and all involved associated support vessels, are conducting the removal operations, which will be three days a week for four weeks. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting four weeks, for three days a week, that will prohibit entry within 500 yards of the small boat "Nessy" and all involved associated support vessels, while in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W., while personnel are conducting the removal operations of the Double-Crested Cormorant. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–0818 to read as follows:

§ 165.T13–0818 Safety Zone; Columbia River.

(a) *Location.* The following area is the safety zone: all navigable waters of the Columbia River within 500 yards of the small boat “Nessy,” and all involved associated support vessels, while in the area encompassing these points: 46°15′45″ N., 123°59′39″ W.; 46°15′24″ N., 123°59′42″ W.; 46°13′32″ N., 123°57′18″ W.; 46°15′9″ N., 123°55′24″ W.; and 46°15′54″ N., 123°58′6″ W.

(b) *Regulations.* In accordance with the general regulations in subpart C of this part, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. Where immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by members of the U. S. Army Corps of Engineers and U.S. Department of Agriculture Wildlife Services onboard the small boat “Nessy,” and other federal, state, or local agencies in enforcing this section.

(d) *Enforcement period.* This section is effective from September 21, 2016, through October 21, 2016. It will be enforced when the small boat “Nessy,” and all involved associated support vessels, are conducting the removal operations of the Double-Crested Cormorant. The small boat “Nessy” is described as a 20-foot black and gray aluminum work skiff with an overhead light arch. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.

Dated: September 16, 2016.

D.F. Berliner,

Captain, U.S. Coast Guard, Acting Captain of the Port, Sector Columbia River.

[FR Doc. 2016–22821 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AP75

Authority To Solicit Gifts and Donations

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On July 11, 2016, the Department of Veterans Affairs (VA) published a direct final rule amending its regulation that governs soliciting contributions from the public by officials and employees of NCA, or authorizing the use of officials' or employees' names, name of the Secretary, or the name of VA for the purpose of making a gift or donation to VA. VA received two supportive comments and no adverse comments concerning the direct final rule and its companion substantially identical proposed rule published in the **Federal Register** on the same date. This document confirms that the direct final rule became effective on September 9, 2016. In a companion document in this issue of the **Federal Register**, we are withdrawing as unnecessary the proposed rule.

DATES: The effective date of September 9, 2016, for the direct final rule published July 11, 2016, 81 FR 44792, is confirmed.

FOR FURTHER INFORMATION CONTACT: Thomas Howard, Chief of Staff, National Cemetery Administration (NCA), Department of Veterans Affairs, (40A), 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6215. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a direct final rule published in the **Federal Register** on July 11, 2016, at 81 FR 44792, VA amended 38 Code of Federal Regulations (CFR) 38.603(b), giving the Under Secretary of Memorial Affairs (USMA), or his designee, authority to solicit gifts and donations, or approve the solicitation of gifts and donations from the public. VA published a companion substantially-identical proposed rule on the same date, at 81 FR 44827, to serve as a proposal for the revisions in the direct final rule in case adverse comments were received. The direct final rule and proposed rule each provided a 30-day comment period that ended on August 10, 2016. No adverse comments were received. Two comments that supported the rulemaking were received from the general public. VA is not making any changes to this rulemaking based on the comments.

Under the direct final rule procedures that were described in 81 FR 44827 and 81 FR 44792, the direct final rule became effective on September 9, 2016, because no adverse comments were received within the comment period. In a companion document in this issue of the **Federal Register**, VA is withdrawing the proposed rulemaking, RIN 2900–AP74, published at 81 FR 44827, as unnecessary.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 16, 2016, for publication.

Dated: September 19, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–22834 Filed 9–21–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0209; FRL–9952–74–Region 4]

Air Plan Approval; Alabama and North Carolina; Interstate Transport—2010 NO_2 Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the North Carolina SIP, submitted by the

North Carolina Department of Environmental Quality (NC DEQ) on March 24, 2016, and the portions of a revision to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on December 9, 2015, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO_2) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an "infrastructure SIP." Specifically, EPA is approving North Carolina's March 24, 2016, SIP submission and the portions of Alabama's December 9, 2015, SIP submission addressing interstate transport requirements for the 2010 NO_2 NAAQS.

DATES: This rule is effective on October 24, 2016.

ADDRESSES: EPA has established a docket for these actions under Docket Identification No EPA–R04–OAR–2016–0209. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). EPA sometimes refers to these two prongs conjointly as the "good neighbor" provision of the CAA. The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In a notice of proposed rulemaking (NPRM) published on August 1, 2016 (81 FR 50409), EPA proposed to approve North Carolina's March 24, 2016, SIP submission and the portions of Alabama's December 9, 2015, SIP submission addressing interstate transport requirements for the 2010 NO_2 NAAQS. The NPRM provides additional detail regarding the rationale for EPA's actions, including further discussion of the requirements for prongs 1 and 2. Comments on the proposed rulemaking were due on or before August 31, 2016. EPA received no adverse comments on the proposed actions. All other applicable infrastructure SIP requirements for Alabama and North Carolina for the 2010 1-hour NO_2 NAAQS have been or will be addressed in separate rulemakings.

II. Final Actions

As described previously, EPA is approving North Carolina's March 24, 2016, SIP revision and the portions of Alabama's December 9, 2015, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO_2 NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2016.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

■ 2. Section 52.50(e) is amended by adding a new entry for "110(a)(1) and 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS—Update" at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	*	* *
110(a)(1) and 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS—Update.	Alabama	12/9/2015	9/22/2016, [Insert **Federal Register** citation].	Addressing Prongs 1 and 2 of Section 110(a)(2)(D)(i)(I) only.

Subpart II—North Carolina

■ 3. Section 52.1770(e) is amended by adding a new entry "Good Neighbor Provisions (Section 110(a)(2)(D)(i)(I)) for the 2010 1-hour NO_2 NAAQS" at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation	Explanation
* *	*	*	* *	*
Good Neighbor Provisions (Section 110(a)(2)(D)(i)(I)) for the 2010 1-hour NO_2 NAAQS.	3/24/2016	9/22/2016	[Insert **Federal Register** citation]	

[FR Doc. 2016–22760 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2012–0918; FRL–9951–91–OAR]

Air Quality Designations for the 2012 Primary Annual Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) for Areas in Georgia and Florida

Correction

In rule document 2016–21338 beginning on page 61136 in the issue of Tuesday, September 6, 2016, make the following correction:

§ 83.311 [Amended]

■ On page 61141, in § 81.311, in the table, in the third column, the sixth entry should read "Unclassifiable/Attainment".

[FR Doc. C1–2016–21338 Filed 9–21–16; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0554; FRL–9950–05]

Thiabendazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of thiabendazole in or on the legume vegetable group 6 and foliage of legume vegetable group 7. Syngenta Crop Protection requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also assigns an expiration date to existing tolerances for bean, dry, seed at 0.1 part per million (ppm) and soybean at 0.1 ppm as well as removes a threshold of regulation determination for seed treatment use of thiabendazole on dry pea (including field pea, pigeon pea, chickpea or lentil). Lastly, this regulation establishes a time-limited tolerance on sweet potato. The time-limited tolerance is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The time-limited tolerance will expire and be revoked on December 31, 2019.

DATES: This regulation is effective September 22, 2016. Objections and requests for hearings must be received on or before November 21, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0554, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0554 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 21, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0554, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Agency's Action

A. Petitioned-For Tolerances

In the **Federal Register** of September 9, 2015 (80 FR 54257) (FRL–9933–26), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8368) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.242

be amended by establishing tolerances for residues of the fungicide thiabendazole in or on legume vegetables (succulent or dried), crop group 6 at 0.01 parts per million (ppm); foliage of legume vegetables, crop group 7, except pea, field, hay and vines at 0.01 ppm; pea, field, hay at 0.15 ppm; and pea, field, vines at 0.03 ppm. The petition also requested to amend the tolerances in 40 CFR 180.242 for residues of thiabendazole by removing the tolerances in or on bean, dry, seed at 0.1 ppm and soybean at 0.1 ppm. That document referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, *http://www.regulations.gov*. A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified levels at which the tolerances are being established by this document. The reason for these changes are explained in Unit IV.D.

B. Thiabendazole Threshold of Regulation Determination

In 2008, EPA established a rule codifying its determination that the use of thiabendazole as a seed treatment for dry pea using a maximum application rate of 0.075 pound of active ingredient per 100 pounds of seed did not require a tolerance because residues were below the Agency's threshold of regulation. (73 FR 1976 (Jan. 11, 2008); see 40 CFR 180.2010). The new tolerances for residues of thiabendazole on crop group 6 legume vegetable commodities, including dry pea, and on crop group 7, foliage of legume vegetable commodities, which includes vines and hay from the legume vegetables that the Agency is establishing make the existing threshold of regulation determination unnecessary. The new tolerances cover residues on these commodities resulting from new seed treatment uses that allow for higher application rates and thus residues associated uses covered by the threshold of regulation determination are covered by the new tolerances. As a result, the Agency is removing this determination from section 180.2010.

C. Tolerance for Use of Pesticide Under Emergency Exemption

In response to a crisis exemption request and authorization of a specific exemption request filed under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) on behalf of the North Carolina Department of Agriculture and Consumer Services for the emergency use of thiabendazole to control black rot disease on sweet potato, EPA is establishing pursuant to FFDCA section 408(l)(6) time-limited tolerances for the use of thiabendazole on sweet potato at 10 ppm with an expiration date of December 31, 2019.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of thiabendazole on sweet potato. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and the Agency decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this time-limited tolerance expires and is revoked on December 31, 2019, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potato after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by the time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions whether thiabendazole meets FIFRA's registration requirements for use in or on sweet potato or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerances serves as a basis for registration of thiabendazole by a State for Special Local Needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than North Carolina to use this pesticide on sweet potato under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for thiabendazole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This assessment includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for thiabendazole including exposure resulting from the tolerances, including the time-limited tolerance, established by this action. EPA's assessment of exposures and risks associated with thiabendazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The thyroid and liver (centrilobular hypertrophy) are the primary target organs of thiabendazole toxicity. Thiabendazole produced a treatment related increase in absolute and relative liver weights in both sexes in a chronic dog study. Other treatment related effects reported were histopathological changes in kidneys (hyperplasia of transitional epithelium, tubular degeneration) and spleen (congested and pigmented) in rats. Additional toxic effects observed in these studies included decreases in body weight and/or food consumption. The available database indicates that thiabendazole is not neurotoxic. In an acute neurotoxicity rat study (ACN), decreases in the Functional Observation Battery (FOB) (reduced body temperature in males, reduced rearing in females, and reduced locomotor activity in males and females at time of peak effect (approximately 3 hours post-dose)) were seen without morphological or histopathological effects on the brain. Thiabendazole was not neurotoxic in rats in a subchronic neurotoxicity study. In a 21-day dermal toxicity study in rats, no systemic or dermal effects were seen at the limit dose (1,000 milligram/kilogram/day (mg/kg/day)). In prenatal developmental toxicity studies in rats, rabbits, and mice and in the 2-generation reproduction study in rats, effects in the fetuses or neonates occurred at or above doses that caused maternal or parental toxicity.

In the adult animal, effects on the thyroid following thiabendazole exposure were observed at a dose lower than the neurotoxicity dose observed in the ACN. There are no thiabendazole data with which to determine whether this is also the case in the fetus/postnatal animal. Based on a weight of evidence (WOE) approach considering all the available hazard and exposure information for thiabendazole, the Agency concluded that a developmental thyroid toxicity study is required since there is clear evidence of thyroid toxicity in adult animals and thus a concern for potential toxicity during pregnancy, infancy and childhood. The developmental thyroid toxicity study will better address this concern than a developmental neurotoxicity study. In an immunotoxicity study, thiabendazole produced significant decreased spleen activity at the highest dose tested (5,000 ppm equivalent to 1,027 mg/kg/day) which also produced significant increased liver weight. The genetic toxicology studies on thiabendazole indicate that it is not genotoxic in *in vivo* and *in vitro* assays. Review of literature studies indicated that thiabendazole has weak aneugenic activity in both somatic and germinal cells. In a chronic rat study, thiabendazole induced thyroid tumors in males only. Thiabendazole did not induce tumors in mice. Thiabendazole has been classified by the Agency as "Likely to be carcinogenic at doses high enough to cause a disturbance of the thyroid hormonal balance but not likely to be carcinogenic at doses lower than those which could cause a disturbance of this hormonal balance." This conclusion is based on the observation that that thiabendazole was not mutagenic, but above a threshold dose it interfered with thyroid-pituitary homeostasis leading to increased thyroid stimulating hormone (TSH) stimulation of the thyroid and thyroid tumors. The chronic NOAEL (10 mg/kg/day) for non-cancer risk assessment is not expected to alter thyroid hormone homeostasis nor result in thyroid tumor formation; therefore, the Agency has determined that quantification of risk using a non-linear approach (*i.e.*, chronic population adjusted dose (cPAD)) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to thiabendazole.

Specific information on the studies received and the nature of the adverse effects caused by thiabendazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled "*Thiabendazole: ID#16NC02—Section 18 Specific Emergency Exemption for the Postharvest Use of Thiabendazole on Sweet Potatoes in North Carolina*" on page 32 in docket ID number EPA–HQ–OPP–2015–0554.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for thiabendazole used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 25, 2014 (79 FR 57450) (FRL–9915–78).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiabendazole, EPA considered exposure under the petitioned-for tolerances and the tolerance being established in response to the Agency issuing a section 18 emergency exemption, as well as all existing thiabendazole tolerances in 40 CFR 180.242. EPA assessed dietary exposures from thiabendazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for thiabendazole. In estimating acute dietary exposure, EPA used 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used a refined acute probabilistic dietary exposure assessment for thiabendazole using both anticipated residue estimates based on USDA Pesticide Data Program (PDP) monitoring data and percent crop treated (PCT) information for soybean and wheat and assumed 100 PCT for all other commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, EPA used a refined chronic probabilistic dietary exposure assessment for thiabendazole using both anticipated residue estimates based on USDA PDP monitoring data and PCT information for soybean and wheat and assumed 100 PCT for all other commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to thiabendazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b*: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the acute assessment, the Agency estimated the PCT for existing uses as follows:

Soybeans, 2.5%; wheat, 2.5%.

For the chronic assessment, the Agency estimated the PCT for existing uses as follows:

Soybeans, 1%; wheat, 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which thiabendazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiabendazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiabendazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model GroundWater (PRZM–GW), the estimated drinking water concentrations (EDWCs) of thiabendazole for acute exposures are estimated to be 3.80 parts per billion (ppb) for surface water and 0.62 ppb for ground water, and for chronic exposures are estimated to be 0.47 ppb for surface water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 3.80 ppb was used to assess the contribution to drinking water.

For the chronic dietary risk assessment, the water concentration of value 0.47 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiabendazole is currently registered for use as antimicrobial ingredient in paint, sponges, carpet backing, canvas textiles, wallboard and ceiling tiles, polyurethane foam, plastics and rubber, paper, and coatings and filters used in HVAC systems. There are two antimicrobial exposure scenarios that were assessed for residential exposures which are expected to result in the highest exposures from these antimicrobial uses: Treated paint and impregnated sponges. The other antimicrobial uses of thiabendazole (carpet backing, canvas textiles, wallboard and ceiling tiles, polyurethane foam, plastics and rubber, paper, and coatings and filters used in HVAC systems) are not expected to cause exposure in residential settings because there is no direct contact to the treated articles, the vapor pressure of thiabendazole is very low, and the unlikelihood that the treated plastics and rubbers would be used in toys.

EPA assessed residential exposure to treated paint and impregnated sponges using the following assumptions: For treated paint, residential short-term dermal and inhalation exposure to residential handlers using brush/roller application and airless sprayer application; for the impregnated sponge use, short- and intermediate-term incidental oral exposure. Thiabendazole treated sponges are limited to 600 ppm thiabendazole on a sponge. Various residue amounts may be transferred from the sponge to food contact surfaces, such as countertops and utensils/glassware, and then to food and subsequently ingested. An assessment was conducted for incidental oral exposure assuming that 100% of the thiabendazole on a treated sponge is transferred to surfaces over 20 days and that each 20 days the user would use a new sponge (5% released per day). This assumption is considered conservative because (1) sponges will generally be used much longer than 20 days; (2) it is unlikely that 100% of the thiabendazole would be released from the sponge in such a short period; and (3) it is very unlikely that 100% of any released thiabendazole would be transferred to countertops because this assumption does not account any thiabendazole that is washed down the sink or that normally degrades.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found thiabendazole to share a common mechanism of toxicity with any other substances, and thiabendazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that thiabendazole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of increased quantitative or qualitative susceptibility was seen following *in utero* exposure to thiabendazole with rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. There is no evidence for neurotoxicity following oral exposures to thiabendazole. Thyroid toxicity was seen following subchronic and chronic exposures to adult rats in multiple studies. There is, however, no data regarding the potential effects of thiabendazole on thyroid homeostasis in the young animals. This lack of characterization creates uncertainty with regards to potential life stage sensitivities due to exposure to thiabendazole. Therefore, the Agency is requiring a developmental thyroid assay in rats with thiabendazole. This study will better address the concern for potential thyroid toxicity in the young.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF is retained at 10X in the form of a database uncertainty factor (UFDB). That decision is based on the following findings:

i. The toxicology database for thiabendazole is complete with the exception of a developmental thyroid toxicity study. Based on a WOE approach considering all the available hazard and exposure information for thiabendazole, the Agency concluded that a developmental thyroid toxicity study is required since there is clear evidence of thyroid toxicity in adult animals and thus a concern for potential toxicity during pregnancy, infancy and childhood. The developmental thyroid toxicity study will better address this concern than a developmental neurotoxicity study. Acceptable studies are available for developmental, reproduction, chronic, subchronic, subchronic neurotoxicity and immunotoxicity.

ii. There is no indication that thiabendazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The data submitted to the Agency, as well as those from published literature, demonstrate no increased susceptibility in rats, rabbits, or mice to *in utero* and/or early postnatal exposure to thiabendazole. In the prenatal developmental toxicity studies in rats, rabbits, and mice and in the 2-generations reproduction study in rats, developmental effects in the fetuses or neonates occurred at or above doses that caused maternal or parental toxicity. A developmental neurotoxicity study with thiabendazole was deemed not required by the Agency.

There is evidence of thyroid toxicity following subchronic and chronic exposures to rats characterized as histopathological changes in the thyroid in multiple studies in rats. Disruption of thyroid homeostasis is the initial, critical effect that may lead to adverse effects on the developing nervous system. Thus, as noted above, a developmental thyroid study is required.

iv. There are no residual uncertainties in the exposure database. The dietary risk assessment is conservative and will not underestimate dietary and/or non-dietary occupational exposure to thiabendazole. The acute and chronic dietary assessments conducted with the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) were refined analyses. The assessments utilized anticipated residues, default processing factors, and available percent crop treated data. The DEEM analysis also used Tier 1 drinking water estimates. For these reasons it can be concluded that the DEEM–FCID analysis does not underestimate risk from acute or chronic exposure to thiabendazole. Similarly, EPA does not believe that the non-dietary occupational exposures are underestimated because they are also based on conservative assumptions, including maximum application rates, and standard values for unit exposures and acreage treated/amount handled. These assessments will not underestimate the exposure and risks posed by thiabendazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiabendazole at the 99.9th percentile of exposure will occupy 68% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded

that chronic exposure to thiabendazole from food and water will utilize 5.1% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiabendazole is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiabendazole is currently registered for uses that could result in short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to thiabendazole.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs from the paint use of 2,000 or greater for all population subgroups and aggregate MOEs from the sponge use of 1,400 for children 1–2 years old and 7,000 for the general population. Because EPA's level of concern for thiabendazole is a MOE of 300 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA is regulating chronic dietary risk, including cancer risk, with a chronic RfD that reflects a dose level below those levels at which thyroid hormone balance is impacted, which is protective of potential carcinogenic effects. Based on the lack of chronic risk, EPA concludes there is not a cancer risk from exposure to thiabendazole.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiabendazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Acceptable enforcement analytical methods are available for thiabendazole and benzimidazole in plant commodities. Four spectrophotofluorometric methods for the determination of thiabendazole are published in the Pesticide Analytical Manual (PAM) Vol. II, and a high performance liquid chromatography (HPLC) method with fluorescence detection (FLD) for the determination of benzimidazole (free and conjugated) is identified in the U.S. EPA Index of Residue Analytical Methods under thiabendazole as Study No. 93020.

Another adequate analytical method, GRM040.05A, is also available for data collection and tolerance enforcement of residues of thiabendazole and benzimidazole (free and conjugated) in/on plant commodities. Method GRM040.05A, developed by Syngenta Crop Protection, LLC, is a high performance liquid chromatography with tandem mass spectrometry detection (LC/MS/MS) method used for data collection in crop matrices. HED has designated Method GRM040.05A as a new tolerance enforcement method.

Both methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for thiabendazole on any of the commodities cited in this document.

C. Response to Comments

A comment was submitted by the Center for Food Safety and was primarily concerned about EPA's consideration of the impacts of thiabendazole on the environment, pollinators, and endangered species. This comment is not relevant to the Agency's evaluation of safety of the thiabendazole tolerances under section 408 of the FFDCA, which requires the Agency to evaluate the potential harms to human health, not effects on the environment.

D. Revisions to Petitioned-For Tolerances

The petitioned-for tolerances did not include measurement of benzimidazole (free and conjugated) which is a residue of concern for regulatory purposes. Therefore, the petitioned-for tolerance for the vegetable, legume, group 6 at 0.01 ppm for thiabendazole only, is adjusted to 0.02 ppm to account for the combined residues of thiabendazole and benzimidazole (free and conjugated). Also, EPA concluded that the maximum levels of the combined residues of concern in/on the representative crop commodities of vegetable, foliage of legume, group 7 are within 5x, and that a crop group 7 tolerance level of 0.20 ppm is more appropriate than the petitioned-for separate tolerances for pea, field, hay; pea, field, vines; and vegetable, foliage of legume, group 7, except pea, field, hay and vines.

E. International Trade Considerations

In this rulemaking, EPA is adding an expiration date of March 21, 2017 to the existing tolerances for bean, dry, seed at 0.1 ppm and soybean at 0.1 ppm. These tolerances were based on foliar uses of thiabendazole which are no longer registered and Syngenta requested that these tolerances be removed as part of the petition and notice of filing (NOF). The seed treatment uses on dry bean seed and soybean is now covered by the tolerance being established on vegetable, legume, group 6 at 0.02 ppm. This new tolerance is lower than some existing MRLs on these commodities in Europe and other countries.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures Agreement, EPA notified the WTO of the request to revise these tolerances on September 9, 2015, as WTO notification G/SPS/N/USA/2779. In this action, EPA is allowing the existing higher tolerances to remain in effect for 6 months following the publication of this rule in order to allow a reasonable interval for producers in exporting countries to adapt to the requirements of these modified tolerances. On March 21, 2017, those existing higher tolerances will expire, and the new reduced tolerances for vegetable, legume, group 6 at 0.02 ppm will remain to cover residues of thiabendazole on those commodities. Before that date, residues of thiabendazole on those commodities would be permitted up to the higher tolerance levels; after that date, residues of thiabendazole on vegetable, legume, group 6 will need to comply with the new lower tolerance levels. This reduction in tolerance is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods.

V. Conclusion

Therefore, tolerances are established for residues of thiabendazole in or on vegetable, foliage of legume, group 7 at 0.20 ppm and vegetable, legume, group 6 at 0.02 ppm. The Agency is also adding an expiration date of March 21, 2017 to the existing tolerances for bean, dry, seed at 0.1 ppm and soybean at 0.1 ppm. Residues of thiabendazole will be covered by these higher tolerances until the expiration date, after which time, they will need to comply with the lower tolerance being established today on the vegetable, legume, group 6 at 0.02 ppm. The tolerance for group 6 without a time limitation supersedes the existing section 18 time-limited tolerance for "pea, succulent shelled"; therefore, the Agency is removing that section 18 tolerance.

The Agency is also removing the threshold of regulation determination for thiabendazole from 180.2010 because it is no longer necessary. Lastly, this regulation additionally establishes a time-limited tolerances for residues of thiabendazole in or on sweet potato at 10 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 2016.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.242;

■ a. Revise the entries "bean, dry, seed" and "soybean" to the table in paragraph (a)(1);

■ b. Add alphabetically the entries "Vegetable, foliage of legume, group 7" and "Vegetable, legume, group 6" to the table in paragraph (a)(1)

■ c. Remove the entry for "Pea, succulent shelled" from the table in paragraph (b);

■ d. Add alphabetically the entry "sweet potato" to the table in paragraph (b).

The additions and revisions read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * *	* *
Bean, dry, seed[2]	0.1
* * *	* *
Soybean[2]	0.1
* * *	* *
Vegetable, foliage of legume, group 7	0.20
Vegetable, legume, group 6	0.02
* * *	* *

[2] This tolerance expires on March 21, 2017.

(b) * * *

Commodity	Parts per million	Expiration date
Sweet potato	10	December 31, 2019.

* * * * *

§ 180.2010 [Removed and Reserved]

■ 3. Section 180.2010 is removed and reserved.

[FR Doc. 2016–21753 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102–117 and 102–118

[Change 2016–01; FMR Case 2015–102–2; Docket 2015–0014; Sequence 1]

RIN 3090–AJ59

Federal Management Regulation (FMR); Transportation Payment and Audit

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Management Regulation (FMR), Transportation Payment and Audit, to clarify agency and Department of Defense (DoD) transportation payment and audit requirements. GSA is also amending relevant definitions. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective:* September 22, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ron Siegel, Office of Government-wide Policy, at 202–357–9540 or by email at *ron.siegel@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755. Please cite FMR Case 2015–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

Agencies are authorized to procure transportation services either through the Federal Acquisition Regulation (FAR) by utilizing a contract, or via 49 U.S.C. 10721 (for rail transportation), 49 U.S.C. 13712 (for surface transportation), and/or 49 U.S.C. 15504 (for pipeline transportation) by utilizing rate tenders. It is critical that agencies ensure that transportation services received are properly charged and that the payment made is correct.

Toward that end, the Travel and Transportation Reform Act of 1998 (Pub. L. 105–264) established agency statutory requirements for prepayment audits of Federal agency and DoD transportation expenses. The Act also established GSA's statutory authority for audit oversight to protect the interests of the Government.

This final rule clarifies and strengthens agency and DoD compliance with regulations for transportation prepayment audits and postpayment audits. In addition, this final rule updates definitions in 41 CFR part 102–117, Transportation Management, as a result of the amendments to 41 CFR 102–118.

This final rule is the outcome of the first of a two phase review of FMR part 102–118, Transportation Payment and Audit, conducted by GSA and the Governmentwide Transportation Policy Council (GTPC). The GTPC is composed of representatives from civilian agencies and DoD and provides GSA with guidance in the planning and development of uniform transportation policies and procedures.

The first phase review focused on FMR part 102–118 Subparts A (General), D (Prepayment Audits of Transportation Services), and E (Postpayment Transportation Audits). The second phase review will focus on FMR part 102–118 Subpart A (General), as well as Subparts B (Ordering and Paying for Transportation and Transportation Services), C (Use of Government Billing Documents), and F (Claims and Appeals Procedures).

B. Public Comments and Responses

In the proposed rule published at 80 FR 59094 in the **Federal Register**, on October 1, 2015, GSA provided the public a 60-day comment period which ended on November 30, 2015. GSA received comments from the National Motor Freight Traffic Association, Inc. (NMFTA), and Relocation Management Worldwide Incorporated (RMW). This final rule reflects the following changes made as a result of some of these comments.

Comment: The definition in the proposed rule for *declared value* in FMR 102–117.25 and 102–118.35 contains reference to declared value and released value. However, NMFTA indicates that the "terms 'declared value' and 'released value' are neither synonymous nor recognized by the transportation industry. A carrier establishes released value provisions with the intent of the shipper agreeing to a lesser value for the cargo shipped in return for a lower rate for transportation. Declared value assigns a value to the cargo in order to authenticate loss and damage liability limitations on the cargo that was shipped. Furthermore, it is inequitable to define declared value as a price that could be 'more' than the actual value of the cargo. In commercial practice, a transportation service provider (TSP) will not pay a loss or damage claim in excess of the actual value of the cargo transported."

Response: GSA agrees with the recommendation and consequently has modified the definition *declared value* that is added to 41 CFR 102–117.25 so that it does not reference released value; included a definition for *released value* in 41 CFR 102–117.25; and has removed the definition *released value* from 41 CFR 102–118.

Comment: With regards to the definition *claim,* NMFTA indicates that in the transportation industry, the term *claim* is generally used in the context of claims for the payment of overcharges or claims for loss or damage. NMFTA recommends that any other terms for demands for payment by the TSP to the Government or amounts the TSP believes an agency owes them should not be included in this definition and would be better defined separately.

Response: GSA does not accept this recommendation. The definition of *claim* presented in this final rule is modeled after the definition of *claim* or debt found in 31 U.S.C. 3701(b)(1).

Comment: The Government Transportation Request (GTR) is defined, in part, as a Government document used to procure common carrier interstate transportation services. NMFTA indicates that as far as interstate motor carrier transportation is concerned, the term *common carrier* is no longer defined in 49 U.S.C. 13102. Former common carriers are now referred to as *motor carriers.* NFMTA suggests using the description *motor carrier* or *TSP* which is used elsewhere in these regulations. NFMTA also suggests that since the Government can procure intrastate transportation with a GTR, it does not make sense to include the word "interstate" in the final GTR definition.

Response: The term *common carrier* is used to define Government Transportation Request (GTR) in the Federal Travel Regulation (FTR). In response to the comment, GSA has revised the definition of GTR to clarify that the document is used to acquire passenger transportation.

Comment: Standard Carrier Alpha Code (SCAC) is defined, in part, as the unique four-letter code used to identify American-based motor transportation companies assigned by NMFTA. NMFTA indicates that the SCAC definition should be a two-to-four letter identification code assigned to all modes of transportation companies worldwide by the NMFTA.

Response: GSA accepts this comment and has modified the definition of SCAC to a unique code, typically two to four characters, used to identify transportation companies.

Comment: NFMTA indicates that the Standard Carrier Alpha Code (SCAC) is a proper noun and should be capitalized.

Response: GSA agrees with this comment and has made the appropriate changes.

Comment: When an agency notifies a TSP of any adjustment to a TSP bill, the notice must reference the TSP's Standard Carrier Alpha Code (SCAC) or other agency identifier for the carrier, such as the Department of Defense Activity Address Code (DoDAAC) number. NMFTA suggests deleting the reference to the DoDAAC as the DoDAAC is not used to identify TSPs. NMFTA indicates that the Defense Logistics Agency defines a DoDAAC as ". . . a six-character, alpha-numeric code that uniquely identifies a unit, activity, or organization within the DoDAAD [Department of Defense Activity Address Directory]. A unit, activity, or organization may have more than one DoDAAC for different authority codes or purposes. Each activity that requisitions, contracts for, receives, has custody of, issues, or ships DoD assets, or funds/pays bills for materials and/or services is identified by a six-position alphanumeric DoDAAC."

Response: GSA accepts this suggestion and has deleted the DoDAAC reference.

Comment: The rule indicates that "the prepayment audit cannot be conducted by the same firm providing transportation services for the agency, such as a move manager." Relocation Management Worldwide, Incorporated (RMW) suggests that the term *move manager* is an incorrect example of a TSP and should be removed. RMW indicates that a TSP, being a carrier, could have a conflict of interest auditing their own files, but a move manager does not have to be a TSP.

Response: GSA agrees that the language may be confusing and has modified § 102–118.275(c) to explain that a *move manager* may not have any affiliation with or financial interest in the transportation company providing the transportation services for which the prepayment audit is being conducted.

Comment: RMW asks if the rule's intent is to eliminate a *move manager* from being a prepayment auditor.

Response: GSA has modified the rule to clarify the role of a *move manager* in the prepayment process. GSA's intent is to clarify transportation payment and audit requirements for all agencies including DoD.

Comment: The rule indicates that agencies may choose to use a Third-Party Payment System or charge card company that includes prepayment audit functions, such as Syncada and Payport Express. RMW asks if GSA is allowed to promote specific companies and promote their own specific products in the Code of Federal Regulations.

Response: GSA agrees that the reference to Syncada may constitute an endorsement of a private enterprise and has removed the reference from the final rule. However, PayPort Express is a GSA Center for Transportation Management payment solution that is compliant with the rules established by GSA Transportation Audits Division. Being a GSA product, the acknowledgement of PayPort Express, or subsequent GSA payment solution, does not constitute the endorsement of a private enterprise.

Comment: The rule lists what information must be included in an agency's notice to a TSP when an agency is adjusting the TSP's bill. RMW points out that the list of required information excludes the reason for the adjustment and asks if this important element can be added to the list.

Response: The final rule accepts and incorporates the comment.

Comment: The rule indicates that the Administrator of General Services (GSA) has a congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bills. The GSA Transportation Audits Division accomplishes this oversight by conducting postpayment audits of all agencies' transportation bills. RMW suggests that GSA should confirm and identify that the audits are actually performed by contracted auditing companies and not by GSA Transportation Audits.

Response: GSA does not accept this recommendation. Information regarding the GSA Transportation Audits Division procedures, including reviewing transportation invoices in conjunction with audit contracting companies, is provided on the Division's Postpayment Audit homepage (*www.gsa.gov/portal/content/100056*).

Comment: RMW requests that GSA identify what safeguards are in place to prevent contracted auditing companies from providing both the prepayment and postpayment audit of the same bill.

Response: GSA has determined that this topic is outside the intended scope of this rule. GSA Transportation Audits Division's Dispute Resolution Branch (*http://www.gsa.gov/portal/content/100753*) provides oversight and quality control evaluation of GSA audit contractors and ensures integrity in all audit processes.

Comment: This rule indicates that the GSA Transportation Audits Division does not charge agencies a fee for conducting the transportation postpayment audit and the expenses for such audits are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds. Since the GSA Transportation Audits Division or contracted auditing companies do not receive funding unless they find errors in TSP billings, RMW asks how this is not a conflict of interest?

Response: GSA has determined that this topic is outside the intended scope of this rule. The funding mechanism identified in this rule is established by statute, 31 U.S.C. 3726 Payment for transportation.

Comment: If the GSA Transportation Audits Division is overseeing the prepay audit to ensure it is being done properly, RMW asks who is overseeing the GSA Transportation Audits Division to determine if the prepay oversight and the postpayment audit are being done properly?

Response: While GSA has determined that this topic is outside the intended scope of this rule, the GSA Office of the Inspector General and the management of the Federal Acquisition Service (FAS) provide such oversight of the GSA Transportation Audits Division.

C. Substantive Changes

This final rule:

- Revises the definitions for "Agency", "Bill of lading" (BOL), "Government bill of lading" (GBL), "Transportation document" (TD), and "Transportation Service Provider" (TSP), removes the definition "Release/declared value", and adds the definitions "Declared value" and "Released value" in FMR part 102–117; and revises the definitions "Agency", "Bill of lading" (BOL), "Document reference number", "Government bill of lading" (GBL), "Government transportation request", Offset", "Overcharge", "Postpayment audit", "Rate authority", "Reparation", "Standard Carrier Alpha Code" (SCAC), "Statement of difference", "Supplemental bill", "Transportation document (TD)", and "Transportation Service provider" (TSP), removes the terms "Agency claim", "Released value", "Transportation service", "Transportation service provider claim", and "Virtual GBL (VGBL)", and adds the terms "Claim" and

"Transportation" in FMR part 102–118 to ensure consistency.

- Strengthens agency requirements and responsibilities for transportation prepayment audits and transportation postpayment audit, submission requirements to the GSA Transportation Audits Division, and the required information on all transportation documentation.
- Updates and clarifies GSA Transportation Audits Division roles and responsibilities.

C. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action, and therefore, will not be subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

These revisions are not substantive, and therefore, this rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2), because it applies to agency management or personnel.

E. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

F. Small Business Regulatory Enforcement Fairness Act

This rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates to agency management or personnel.

List of Subjects in 41 CFR Parts 102–117 and 102–118

Accounting, Claims, Freight, Government property management, Moving of household goods, Reporting and recordkeeping requirements, Transportation.

Dated: September 8, 2016.

Denise Turner Roth,

Administrator.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 102–117 and 102–118 as follows:

PART 102–117—TRANSPORTATION MANAGEMENT

■ 1. The authority citation for 41 CFR part 102–117 continues to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.;* 46 U.S.C. 55305; 49 U.S.C. 40118.

■ 2. Amend § 102–117.25 by—

■ a. Revising the definitions "Agency" and "Bill of lading (BOL)";

■ b. Adding, in alphabetical order, the definition "Declared value";

■ c. Revising the definition "Government bill of lading (GBL)";

■ d. Removing the definition "Release/declared value";

■ e. Adding, in alphabetical order, the definition "Released value"; and

■ f. Revising the definitions "Transportation document (TD)", and "Transportation service provider (TSP)".

The revisions and additions read as follows:

§ 102–117.25 What definitions apply to this part?

* * * * *

Agency means a department, agency, and independent establishment in the executive branch of the Government as defined in 5 U.S.C. 101 *et seq.*, and a wholly-owned Government corporation as defined in 31 U.S.C. 9101(3).

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), means the document used as a receipt of goods, a contract of carriage, and documentary evidence of title.

* * * * *

Declared value means the actual value of cargo as declared by the agency for reimbursement purposes or to establish duties, taxes, or other customs fees. The *declared value* is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods, unless the declared value exceeds the carrier's released value (see "Released value"). The statement of declared value must be shown on any applicable tariff, tender, contract, bill of lading, or other document covering the shipment.

* * * * *

Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see Bill of Lading (BOL) definition).

* * * * *

Released value means an assigned value of the cargo for reimbursement purposes that is not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo; however, in the event of loss or damage to the shipment, if the released value exceeds the actual value, reimbursement would be the lesser of the two values. When the released value is agreed upon as the basis of reimbursement and the actual value exceeds the released value, the released value is the maximum amount that could be recovered by the agency in the event of loss or damage to the shipments of freight or household goods. When negotiating for rates and the released value is proposed to be less than the actual value of the cargo, the TSP should offer a rate lower than other rates for shipping cargo at full value. The statement of released value may be shown in any applicable tariff, tender, contract, transportation document or other documents covering the shipment.

* * * * *

Transportation document (TD) means any executed document for transportation service, such as a bill of lading, a tariff, a tender, a contract, a Government Transportation Request (GTR), invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

* * * * *

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, household goods, or passenger transportation or related services to an agency.

* * * * *

PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

■ 3. The authority citation for 41 CFR part 102–118 is revised to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.;* 46 U.S.C. 55305; 49 U.S.C. 40118.

■ 4. Revise § 102–118.10 to read as follows:

§ 102–118.10 What is a transportation audit?

A transportation audit is a thorough review and validation of transportation related documents and bills. The audit must examine the validity, propriety, and conformity of the charges or rates with tariffs, quotations, contracts, agreements, or tenders, as appropriate.

§ 102–118.15 [Amended]

■ 5. Amend § 102–118.15 by removing "or people and/or" and adding ", people or" in its place.

■ 6. Revise § 102–118.20 to read as follows:

§ 102–118.20 Who is subject to this part?

This part applies to all agencies (including the Department of Defense (DoD)) and TSPs defined in § 102–118.35, and wholly-owned Government corporations as defined in 31 U.S.C. 101, *et seq.* and 31 U.S.C. 9101(3). Your agency is required to incorporate this part into its internal regulations.

■ 7. Revise §§ 102–118.25 and 102–118.30 to read as follows:

§ 102–118.25 What must my agency provide to GSA regarding its transportation policies?

As part of the evaluation of agencies' transportation program and postpayment audit, GSA may request to examine your agency's transportation prepayment audit program and policies to verify the performance of the prepayment audit. GSA Office of Government-wide Policy, Transportation Policy Division and GSA Transportation Audits Division may suggest revisions of agencies' audit program or policies.

§ 102–118.30 Are Government-controlled corporations bound by this part?

This part does not apply to Government-controlled corporations and mixed-ownership Government corporations as defined in 31 U.S.C. 9101(1) and (2).

■ 8. Amend § 102–118.35 by-

■ a. Revising the definition "Agency";

■ b. Removing the definition "Agency claim";

■ c. Revising the definition "Bill of lading";

■ d. Adding, in alphabetical order, the definition "Claim";

■ e. Revising the definitions "Document reference number", "Government bill of lading (GBL)", "Government contractor-issued charge card", "Government Transportation Request (GTR)", "Offset", "Overcharge", "Postpayment audit", "Prepayment audit", and "Rate authority";

■ f. Removing the definition "Released value";

■ g. Revising the definitions "Reparation", "Standard carrier alpha code (SCAC)", "Statement of difference", and "Supplemental bill";

■ h. Adding, in alphabetical order, the definition "Transportation";

■ i. Revising the definition "Transportation document (TD)";

■ j. Removing the definition "Transportation service";

■ k. Revising the definition "Transportation service provider (TSP)";

■ l. Removing the definitions "Transportation service provider claim" and "Virtual GBL (VGBL)"; and

■ m. Revising the "Note" at the end of the section. The revisions and additions read as follows:

§ 102–118.35 What definitions apply to this part?

* * * * *

Agency means a department, agency, or instrumentality of the United States Government (31 U.S.C. 101).

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), means the document used as a receipt of goods, a contract of carriage, and documentary evidence of title.

* * * * *

Claim means—

(1) Any demand by an agency upon a transportation service provider (TSP) for the payment of overcharges, ordinary debts, fines, penalties, administrative fees, special charges, and interest; or

(2) Any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which is believed to be owed; and any subsequent bills from the TSP resulting from a transaction that was prepayment or postpayment audited by the GSA Transportation Audits Division.

Document reference number (DRN) means the unique number on a bill of lading, Government Transportation Request (GTR), or transportation ticket used to track the movement of shipments and individuals.

* * * * *

Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see Bill of lading (BOL) definition).

Government contractor-issued charge card means the charge card used by authorized individuals to pay for official travel and transportation related expenses for which the contractor bills the employee. This is different than a centrally billed account paying for official travel and transportation related expenses for which the agency is billed.

Government Transportation Request (GTR) (Optional Form 1169)—means a Government document used to procure passenger transportation services from a TSP. The document obligates the Government to pay for transportation services provided and is used when a Government contractor issued charge card is not.

Offset means something that serves to counterbalance or to compensate for something else. These are funds owed to a TSP that are not released by the agency but instead used to repay the agency for a debt incurred by the TSP.

* * * * *

Overcharge means those charges for transportation that exceed those applicable under the executed agreement for services such as bill of lading (including a GBL, contract, rate tender or a GTR).

Postpayment audit means an audit of transportation billing documents, and all related transportation documents after payment, to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit process may also include subsequent adjustments and collection actions taken against a TSP by the Government (31 U.S.C. 3726).

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders (31 U.S.C. 3726).

* * * * *

Rate authority means the document that establishes the legal charges for a transportation shipment. Charges included in a rate authority are those rates, fares, and charges for transportation and related services contained in tariffs, tenders, contracts, bills of lading, and other equivalent documents.

Reparation means a payment to or from an agency to correct an improper transportation billing as determined by a postpayment audit involving a TSP. Improper routing, overcharges, or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

Standard Carrier Alpha Code (SCAC) is a unique code, typically two to four characters, used to identify transportation companies.

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when they determine that a TSP has billed the agency for more than the proper amount for the services. This statement tells the TSP on the invoice, the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference for each transportation transaction.

* * * * *

Supplemental bill means the bill for services that the TSP submits to the agency for additional payment of the services provided.

* * * * *

Transportation means service involved in the physical movement (from one location to another) of people, household goods, and freight by a TSP or a Third Party Logistics (3PL) entity for an agency, as well as activities directly relating to or supporting that movement. These activities are defined in 49 U.S.C. 13102.

Transportation document (TD) means any executed document for transportation services, such as a bill of lading, a tariff, a tender, a contract, a GTR, invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, household goods, or passenger transportation or related services to an agency.

Note to § 102–118.35: 15 U.S.C. 96, *et seq.*, 49 U.S.C. 13102, *et seq.*, and 41 CFR Chapter 302 Federal Travel Regulation defines additional transportation terms not listed in this section.

■ 9. Revise Subpart D to read as follows:

Subpart D—Prepayment Audit of Transportation Services

Sec.

Agency Requirements for a Transportation Prepayment Audit Program

§ 102–118.265 What is a prepayment audit?
§ 102–118.270 Must my agency establish a transportation prepayment audit program, and how is it funded?
§ 102–118.275 What must my agency consider when developing a transportation prepayment audit program?
§ 102–118.280 Must all transportation payment records, whether they are electronic or paper, undergo a prepayment audit?
§ 102–118.285 What must be included in my agency's transportation prepayment audit program?

Agency Requirements With Transportation Service Providers

§ 102–118.290 Must my agency notify the TSP of any adjustment to the TSP bill?
§ 102–118.295 Does my agency transportation prepayment audit program need to establish appeal procedures?
§ 102–118.300 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?
§ 102–118.305 What information must be on all transportation payment records that have completed my agency's prepayment audit?
§ 102–118.310 What does the GSA Transportation Audits Division consider when verifying an agency prepayment audit program?
§ 102–118.315 How does my agency contact the GSA Transportation Audits Division?
§ 102–118.320 What action should my agency take if the agency's transportation prepayment audits program changes?

Agency Certifying and Disbursing Officers

§ 102–118.325 Does establishing an agency Chief Financial Officer-approved transportation prepayment audit program change the responsibilities of the certifying officers?
§ 102–118.330 Does a transportation prepayment audit waiver change any liabilities of the certifying officer?
§ 102–118.335 What relief from liability is available for the certifying official under a transportation postpayment audit?
§ 102–118.340 Do the requirements of a transportation prepayment audit change the disbursing official's liability for overpayment?
§ 102–118.345 Where does relief from transportation prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Exemptions and Suspensions of the Mandatory Transportation Prepayment Audit Program

§ 102–118.350 What agency has the authority to grant an exemption from the transportation prepayment audit requirement?
§ 102–118.355 How does my agency apply for an exemption from a transportation prepayment audit requirement?
§ 102–118.360 How long will GSA take to respond to an exemption request from a transportation prepayment audit requirement?
§ 102–118.365 Can my agency renew an exemption from the transportation prepayment audit requirements?
§ 102–118.370 Are my agency's prepayment audited transportation documentation subject to periodic postpayment audit oversight from the GSA Transportation Audits Division?
§ 102–118.375 Can GSA suspend my agency's transportation prepayment audit program?

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.;* 46 U.S.C. 55305; 49 U.S.C. 40118.

Subpart D—Prepayment Audit of Transportation Services

Agency Requirements for a Transportation Prepayment Audit Program

§ 102–118.265 What is a prepayment audit?

Prepayment audit means a review of transportation documentation before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. Prepayment auditing by your agency will detect and eliminate billing errors before payment (31 U.S.C. 3726).

§ 102–118.270 Must my agency establish a transportation prepayment audit program, and how is it funded?

(a) Yes, under 31 U.S.C. 3726, your agency is required to establish a transportation prepayment audit program. Your agency's Chief Financial Officer (CFO) must approve the prepayment audit program.

(b) Your agency must pay for the prepayment audit program from those funds appropriated for transportation services.

(1) Agencies are encouraged to consider using a GSA Transportation Audits Division approved third party electronic payment processor for transportation invoice processing, payment, and prepayment audit. These electronic payment processors are no cost to the agency and are fully compliant with GSA Transportation Audits Division prepayment audit requirements.

(2) Use of these third party payment processors generally means your agency will not have to provide any additional prepayment or postpayment documentation to GSA Transportation Audits Division.

§ 102–118.275 What must my agency consider when developing a transportation prepayment audit program?

(a) Your agency's transportation prepayment audit program must consider all of the methods that your agency uses to order and pay for passenger, household goods, and freight transportation to include Government contractor-issued charge cards (see § 102–118.35 for definition Government contractor-issued charge cards).

(b) Each method of ordering transportation and transportation services for passenger, household goods, and freight transportation may require a different kind of prepayment audit process. The manner in which your agency orders or procures transportation services determines how and by whom the bill for those services will be presented. Your agency should ensure that each TSP bill or employee travel voucher contains enough information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated.

(c) The prepayment audit cannot be conducted by the same firm providing the transportation services for the agency. If a move manager is being utilized, the move manager may not have any affiliation with or financial interest in the transportation company providing the transportation services for which the prepayment audit is being conducted. Contracts with charge card companies that provide prepayment audit services are a valid option. The agency can choose to—

(1) Create an internal prepayment audit program;

(2) Contract directly with a prepayment audit service provider;

(3) Use the services of a prepayment audit contractor under GSA's multiple award schedule covering audit and financial management services (*SIN 520.10 Transportation Audits*); or

(4) Use a Third-Party Payment System or charge card company that includes prepayment audit functions, such as the GSA Center for Transportation Management's PayPort Express.

(d) An appeals process must be established for a TSP to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim.

(e) A process to ensure that all agency transportation procurement and related documents including contracts and tenders are submitted electronically to GSA Transportation Audits Division.

(f) Use of GSA Transportation Audits Division's Prepayment Audit Program template is recommended (contact *Audit.Policy@gsa.gov* for a copy of the template). If the template is not used, provide the same information listed on the template to GSA Transportation Audits Division.

§ 102–118.280 Must all transportation payment records, whether they are electronic or paper, undergo a prepayment audit?

Yes, all transportation bills and payment records, whether they are electronic or paper, must undergo a prepayment audit with the following exceptions:

(a) Your agency's prepayment audit program uses a statistical sampling technique of the bills. If your agency chooses to use statistical sampling, all bills must be

(1) At or below the Comptroller General specified limit of $2,500.00 (31 U.S.C. 3521(b)); and

(2) In compliance with the U.S. Government Accountability Office Using Statistical Sampling (GAO/PEMD–10.1.6), Rev. 1992, Chapter 7 Random Selection Procedures obtainable from *http://www.gao.gov;* or

(b) The Administrator of General Services grants your agency a specific exemption from the prepayment audit requirement which may include bills determined to be below your agency's threshold, mode or modes of transportation, or for an agency or subagency.

§ 102–118.285 What must be included in an agency's transportation prepayment audit program?

The agency prepayment audit program must include—

(a) The agency's CFO approval of the transportation prepayment audit program with submission to GSA Transportation Audits Division;

(b) Compliance with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(c) Assurance that each TSP bill or employee travel voucher contains appropriate information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated;

(d) Verification of all transportation bills against filed rates and charges before payment;

(e) A process to forward all transportation documentation (TD) monthly to the GSA Transportation Audits Division.

(1) GSA Transportation Audits Division can provide your agency a Prepayment Audit Program with a monthly reporting template upon request at *Audit.Policy@gsa.gov* (see § 102–118.35 for definition TD).

(2) In addition to the requirements for agencies to maintain transportation records, GSA will store paid transportation bills in accordance with the General Records Schedule 9, Travel and Transportation (36 CFR 1228.22). GSA will arrange for storage of any document requiring special handling, such as bankruptcy and court cases. These bills will be retained pursuant to 44 U.S.C. 3309 until claims have been settled;

(f) Establish procedures in which transportation bills not subject to prepayment audit, such as bills for unused tickets and charge card billings, are handled separately and are also forwarded monthly to the GSA Transportation Audits Division;

(g) A minimum dollar threshold for transportation bills subject to audit;

(h) A statement in a cost reimbursable contracts contract or rate tender that the contractor shall submit to the address and in the electronic format identified for prepayment audit, transportation documents which show that the United States will assume freight charges that were paid by the contractor. Cost reimbursable contractors shall only submit for audit bills of lading with freight shipment charges exceeding $100.00. Bills under $100.00 shall be retained on-site by the contractor and made available for on-site Government audits (Federal Acquisition Regulation (FAR) 52.247–67);

(i) Require your agency's paying office to offset, if directed by GSA's Transportation Audits Division, debts from amounts owed to the TSP within the 3 years (31 U.S.C. 3726(b));

(j) A process to ensure complete and accurate audits of all transportation bills and notification to the TSP of any adjustment within 7 calendar days of receipt of the bill;

(k) An appeals process as part of the approved prepayment audit program for a TSP to appeal any reduction in the amount billed. Refer to § 102–118.295 for details regarding the appeals process.

(l) Accurate notices and agency procedures for notifying the TSPs with a detailed description of the reasons for any full or partial rejection of the stated charges on the invoice. Refer to § 102–118.290 for notice requirements; and

(m) A unique agency numbering system to handle commercial paper and practices (see § 102–118.55 for information on administrative procedures your agency must establish).

Agency Requirements With Transportation Service Providers

§ 102–118.290 Must my agency notify the TSP of any adjustment to the TSP bill?

(a) Yes, your agency must notify the TSP of any adjustment to the TSP bill either electronically or in writing within seven calendar days of the agency receipt of the bill.

(b) This notice must include:

(1) TSP's bill number;

(2) Agency name;

(3) TSP's TIN;

(4) SCAC;

(5) DRN;

(6) Date invoice submitted;

(7) Amount billed;

(8) Date invoice was approved for payment;

(9) Date and amount agency paid;

(10) Payment location number and agency organization name;

(11) Payment voucher number;

(12) Complete contract, tender or tariff authority, including item or section number;

(13) Reason for the adjustment; and

(14) Complete information on the agency appeal process.

(c) A TSP must submit claims to the agency within three years under the guidelines established in subpart F, Claims and Appeals Procedures, of this part.

§ 102–118.295 Does my agency transportation prepayment audit program need to establish appeal procedures?

Yes, your agency must establish, in the approved prepayment audit program, an appeals process for a TSP to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim. Your agency must complete the review of the appeal and inform the TSP of the agency determination within 30 calendar days of the receipt of the appeal, either electronically or in writing.

§ 102–118.300 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?

(a) If your agency is unable to resolve the disputed amount with the TSP, your agency must submit, within 30 calendar days, all relevant transportation documentation associated with the dispute, including a complete billing history and the appropriation or fund charged, to GSA Transportation Audits Division by email at *Audit.Policy@gsa.gov,* or by mail to: U.S. General Services Administration, 1800 F St. NW., 3rd Floor, Mail Hub 3400, Washington, DC 20405.

(b) The GSA Transportation Audits Division will review the appeal of an agency's final, full, or partial denial of a claim and issue a decision within 30 calendar days of receipt of appeal.

(c) A TSP must submit claims to the agency within three years under the guidelines established in subpart F of this part.

§ 102–118.305 What information must be on all transportation payment records that have completed my agency's prepayment audit?

(a) The following information must be annotated on all transportation payment records, electronically or on paper, that have completed your agency's prepayment audit and for submission to GSA Transportation Audits Division:

(1) The date the bill was received from a TSP;

(2) A TSP's invoice number;

(3) Your agency name;

(4) DRN;

(5) Amount billed;

(6) Date invoice was approved for payment;

(7) Date and amount agency paid;

(8) Payment location code number and office or organization name;

(9) Payment voucher number;

(10) Complete contract, tender or tariff authority, including item or section number;

(11) The TSP's TIN;

(12) The TSP's SCAC;

(13) The auditor's authorization code or initials; and

(14) A copy of any statement of difference and the date it was sent to the TSP.

(b) Your agency can find added guidance in the "U.S. Government Freight Transportation Handbook." This handbook is located at *www.gsa.gov/transaudits.*

§ 102–118.310 What does the GSA Transportation Audits Division consider when verifying an agency prepayment audit program?

GSA Transportation Audit Division bases verification of agency prepayment audit programs on objective cost-savings, paperwork reductions, current audit standards, and other positive improvements, as well as adherence to the guidelines listed in this part.

§ 102–118.315 How does my agency contact the GSA Transportation Audits Division?

Your agency may contact the GSA Transportation Audits Division at *Audit.Policy@gsa.gov.*

§ 102–118.320 What action should my agency take if the agency's transportation prepayment audit program changes?

(a) If your agency's transportation prepayment audit program changes in any way to include changes in prepayment auditors, your agency must submit the CFO-approved revised transportation prepayment audit program to GSA Transportation Audits Division via email at *Audit.Policy@gsa.gov,* Subject line: Agency PPA-Revised.

(b) If GSA determines the agency's approved plan is insufficient, GSA will contact the agency CFO to inform of the prepayment audit program deficiencies and request corrective action and resubmission to GSA Transportation Audits Division.

Agency Certifying and Disbursing Officers

§ 102–118.325 Does establishing an agency Chief Financial Officer-approved transportation prepayment audit program change the responsibilities of the certifying officers?

No, in a prepayment audit program, the official certifying a transportation voucher is held liable for verifying transportation rates, freight classifications, and other information provided on a transportation billing instrument or transportation request undergoing a prepayment audit (31 U.S.C. 3528).

§ 102–118.330 Does a transportation prepayment audit waiver change any liabilities of the certifying officer?

Yes, a certifying official is not personally liable for verifying transportation rates, freight classifications, or other information provided on a bill of lading or passenger transportation request when the Administrator of General Services or designee waives the prepayment audit requirement and your agency uses postpayment audits.

§ 102–118.335 What relief from liability is available for the certifying official under a transportation postpayment audit?

The agency counsel relieves a certifying official from liability for transportation overpayments in cases where—

(a) Postpayment is the approved method of auditing;

(b) The overpayment occurred solely because the administrative review before payment did not verify transportation rates; and

(c) The overpayment was the result of using improper transportation rates or freight classifications or the failure to deduct the correct amount under a land grant law or agreement.

§ 102–118.340 Do the requirements of a transportation prepayment audit change the disbursing official's liability for overpayment?

No, the disbursing official has a liability for overpayments on all transportation bills subject to prepayment audit (31 U.S.C. 3322).

§ 102–118.345 Where does relief from transportation prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Your agency's counsel has the authority to relieve liability and give advance opinions on liability issues to certifying, accountable, and disbursing officers (31 U.S.C. 3527).

Exemptions and Suspensions of the Mandatory Transportation Prepayment Audit Program

§ 102–118.350 What agency has the authority to grant an exemption from the transportation prepayment audit requirement?

Only the Administrator of General Services or their designee has the authority to grant an exemption for a specific time period from the prepayment audit requirement. The Administrator may exempt bills, a particular mode or modes of transportation, or an agency or subagency from a prepayment audit and verification and in lieu thereof require a postpayment audit, based on cost effectiveness, public interest, or other factors the Administrator considers appropriate (31 U.S.C. 3726(a)(2)).

§ 102–118.355 How does my agency apply for an exemption from a transportation prepayment audit requirement?

Your agency must submit a request for an exemption from the requirement to perform transportation prepayment audits by email to *Audit.policy@gsa.gov,* Subject Line: Prepayment Audit Exemption Request. The agency exemption request must explain in detail why the request is submitted based on cost effectiveness, public interest, or other factors the Administrator considers appropriate, such as transportation modes, dollar thresholds, adversely affecting the agency's mission, or is not feasible (31 U.S.C. 3726(a)(2)).

§ 102–118.360 How long will GSA take to respond to an exemption request from a transportation prepayment audit requirement?

GSA will respond to the exemption from the transportation prepayment audit requirement request within 180 calendar days from the date of receipt.

§ 102–118.365 Can my agency renew an exemption from the transportation prepayment audit requirements?

It may be possible for your agency to be granted a prepayment audit exemption extension. Your agency must submit a request for the extension to GSA Transportation Audits Division at least six months in advance of the current exemption expiration.

§ 102–118.370 Are my agency's prepayment audited transportation documentation subject to periodic postpayment audit oversight from the GSA Transportation Audits Division?

Yes. All your agency's prepayment audited transportation documents are subject to the GSA Transportation Audits Division postpayment audit oversight. Upon request, GSA Transportation Audits Division will provide a report analyzing your agency's prepayment audit program.

§ 102–118.375 Can GSA suspend my agency's transportation prepayment audit program?

(a) Yes. The Director of the GSA Transportation Audits Division may suspend your agency's transportation prepayment audit program until the agency corrects their prepayment audit program deficiencies. This suspension may be in whole or in part. If GSA suspends your agency's transportation prepayment audit and GSA assumes responsibility for auditing an agencies prepayment audit program, the agency will reimburse GSA for the expense.

(b) This suspension determination is based on identification of a systematic or frequent failure of the agency's transportation prepayment audit program to—

(1) Conduct a prepayment audit of your agency's transportation bills; and/or

(2) Abide by the terms of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(3) Adjudicate TSP claims disputing prepayment audit positions of the agency regularly within 30 calendar days of receipt;

(4) Follow Comptroller General decisions, Civilian Board of Contract Appeals decisions, the Federal Management Regulation and GSA instructions or precedents about substantive and procedure matters; and/or

(5) Provide information and data or to cooperate with on-site inspections necessary to conduct a quality assurance review.

■ 10. Revise Subpart E to read as follows:

Subpart E—Postpayment Transportation Audits

Sec.

§ 102–118.400 What is a transportation postpayment audit?

§ 102–118.405 Who conducts a transportation postpayment audit?

§ 102–118.410 If agencies perform the mandatory transportation prepayment audit, will this eliminate the requirement for a transportation postpayment audit conducted by GSA?

§ 102–118.415 Can the Administrator of General Services exempt the transportation postpayment audit requirement?

§ 102–118.420 Is my agency allowed to perform a postpayment audit on our transportation documents?

§ 102–118.425 Is my agency required to forward all transportation documents to the GSA Transportation Audits Division, and what information must be on these documents?

§ 102–118.430 What is the process the GSA Transportation Audits Division employs to conduct a postpayment audit?

§ 102–118.435 What are the transportation postpayment audit roles and responsibilities of the GSA Transportation Audits Division?

§ 102–118.440 Does my agency pay for a transportation postpayment audit conducted by the GSA Transportation Audits Division?

§ 102–118.445 How do I contact the GSA Transportation Audits Division?

Subpart E—Postpayment Transportation Audits

§ 102–118.400 What is a transportation postpayment audit?

Postpayment audit means an audit of transportation billing documents after payment to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit may also include subsequent adjustments and collection actions taken against a TSP by the Government (31 U.S.C. 3726).

§ 102–118.405 Who conducts a transportation postpayment audit?

The Administrator of General Services (GSA) has a congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bills. The GSA Transportation Audits Division accomplishes this oversight by conducting postpayment audits of all agencies' transportation bills.

§ 102–118.410 If agencies perform the mandatory transportation prepayment audit, will this eliminate the requirement for a transportation postpayment audit conducted by GSA?

No, agency compliance to the mandatory transportation prepayment audit does not eliminate the requirement of the transportation postpayment audit conducted by GSA (31 U.S.C. 3726).

§ 102–118.415 Can the Administrator of General Services exempt the transportation postpayment audit requirement?

Yes. The Administrator of General Services or designee may exempt, for a specified time, an agency or subagency from the GSA transportation postpayment audit oversight requirements of this subpart. The Administrator can also exempt modes (31 U.S.C. 3726).

§ 102–118.420 Is my agency allowed to perform a postpayment audit on our transportation documents?

No. Your agency may not perform a transportation postpayment audit unless granted an exemption and specifically directed to do so by the Administrator in lieu of a prepayment audit. Whether such an exemption is granted or not, your agency must forward all transportation documents (TD) to GSA for postpayment audit (see § 102–118.35 for definition TD).

§ 102–118.425 Is my agency required to forward all transportation documents to GSA Transportation Audits Division, and what information must be on these documents?

(a) Yes, your agency must provide all TDs to GSA Transportation Audits Division (see § 102–118.35 for definition TD).

(b) The following information must be annotated on all TDs and bills that have completed your agency's prepayment audit for submission to GSA Transportation Audits Division:

(1) The date the bill was received from a TSP;

(2) A TSP's invoice number;

(3) Your agency name;

(4) A DRN;

(5) Amount billed;

(6) Date invoice was approved for payment;

(7) Payment date and amount agency paid;

(8) Payment location code number and office name;

(9) Payment voucher number;

(10) Complete contract, tender, or tariff authority, including item or section number;

(11) The TSP's TIN;

(12) The TSP's SCAC;

(13) The auditor's full name, email address, contact telephone number, and authorization code; and

(14) A copy of any statement of difference sent to the TSP.

(c) Your agency can find additional guidance in the "U.S. Government Freight Transportation Handbook." This handbook is located at *www.gsa.gov/transaudits.*

§ 102–118.430 What is the process the GSA Transportation Audits Division employs to conduct a postpayment audit?

The GSA Transportation Audits Division

(a) Audits select TSP bills after payment;

(b) Audits select TSP bills before payment as needed to protect the Government's interest;

(c) Examines, settles, and adjusts accounts involving payment for transportation and related services for the account of agencies;

(d) Adjudicates and settles transportation claims by and against agencies;

(e) Offsets an overcharge by any TSP from an amount subsequently found to be due that TSP;

(f) Issues a Notice of Overcharge stating that a TSP owes a debt to the agency. This notice states the amount paid and the basis for the proper charge for the document reference number (DRN), and cites applicable contract, tariff, or tender, along with other data relied on to support the overcharge; and

(g) Issues a GSA Notice of Indebtedness when a TSP owes an ordinary debt to an agency. This notice states the basis for the debt, the TSP's rights, interest, penalty, and other results of nonpayment. The debt is due immediately and is subject to interest charges, penalties, and administrative cost under 31 U.S.C. 3717.

§ 102–118.435 What are the transportation postpayment audit roles and responsibilities of the GSA Transportation Audits Division?

(a) The GSA Transportation Audits Division role is to perform the oversight responsibility of transportation prepayment and postpayment granted to the Administrator. The GSA Transportation Audits Division will—

(1) Examine and analyze transportation documents and payments to discover their validity, relevance and conformity with tariffs, quotations, contracts, agreements, or tenders and make adjustments to protect the interest of an agency;

(2) Examine, adjudicate, and settle transportation claims by and against the agency;

(3) Collect from TSPs by refund, setoff, offset, or other means, the amounts determined to be due the agency;

(4) Adjust, terminate, or suspend debts due on TSP overcharges;

(5) Prepare reports to the Attorney General of the United States with recommendations about the legal and technical bases available for use in prosecuting or defending suits by or against an agency and provide technical, fiscal, and factual data from relevant records;

(6) Provide transportation specialists and lawyers to serve as expert witnesses; assist in pretrial conferences; draft pleadings, orders, and briefs; and participate as requested in connection with transportation suits by or against an agency;

(7) Review agency policies, programs, and procedures to determine their adequacy and effectiveness in the audit of freight or passenger transportation payments, and review related fiscal and transportation practices;

(8) Furnish information on rates, fares, routes, and related technical data upon request;

(9) Inform an agency of irregular shipping routing practices, inadequate commodity descriptions, excessive transportation cost authorizations, and unsound principles employed in traffic and transportation management; and

(10) Confer with individual TSPs or related groups and associations presenting specific modes of transportation to resolve mutual problems concerning technical and accounting matters, and providing information on requirements.

(b) The Administrator of General Services may provide transportation audit and related technical assistance services, on a reimbursable basis, to any other agency. Such reimbursements may be credited to the appropriate revolving fund or appropriation from which the expenses were incurred (31 U.S.C. 3726(j)).

§ 102–118.440 Does my agency pay for a transportation postpayment audit conducted by the GSA Transportation Audits Division?

The GSA Transportation Audits Division does not charge agencies a fee for conducting the transportation postpayment audit. Transportation postpayment audits expenses are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds. However, if a postpayment audit is conducted in lieu of a prepayment audit at the request of an agency, or if there are additional services required, GSA may charge the agency.

§ 102–118.445 How do I contact the GSA Transportation Audits Division?

You may contact the GSA Transportation Audits Division by email at *Audit.Policy@gsa.gov.*

[FR Doc. 2016–22609 Filed 9–21–16; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16–182; RM–11770; DA 16–1007]

Radio Broadcasting Services; Eagle Butte, South Dakota

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of the Cheyenne River Sioux Tribe, the Audio Division amends the FM Table of Allotments, by allotting Channel 228C1 at Eagle Butte, South Dakota, as the first local Tribal-owned service. A staff engineering analysis indicates that

Channel 228C1 can be allotted to Eagle Butte consistent with the minimum distance separation requirements of the Commission's rules with no site restriction. The reference coordinates are 45–01–32 NL and 101–14–22 WL.

DATES: Effective October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 16–182, adopted September 1, 2016, and released September 2, 2016. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.202 [Amended].

■ 2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Eagle Butte, Channel 228C1.

[FR Doc. 2016–22788 Filed 9–21–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6225–01]

RIN 0648–XE868

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; approval of quota transfer.

SUMMARY: NMFS announces its approval of a transfer of a portion of the 2016 commercial bluefish quota from the State of New Jersey to the State of New York. This approval of the transfer complies with the Atlantic Bluefish Fishery Management Plan quota transfer provision. This announcement also informs the public of the revised commercial quotas for New Jersey and New York.

DATES: Effective September 21, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281–9112.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can request approval of a transfer of bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must first approve any such transfer based on the criteria in § 648.162(e).

Both states have requested the transfer of 40,000 lb (18,144 kg) of bluefish commercial quota from New Jersey to New York. Both states have certified that the transfer meets all pertinent state requirements. This quota transfer was requested by the New York to ensure that its 2016 quota would not be exceeded. The Regional Administrator has approved this quota transfer based on his determination that the criteria set forth in § 648.162(e)(1)(i) through (iii) have been met. The revised bluefish quotas for calendar year 2016 are: New Jersey, 683,739 lb (310,139 kg); and New York, 727,289 lb (329,893 kg). These quota adjustments revise the quotas specified in the final rule implementing the 2016–2018 Atlantic Bluefish Specifications published on August 4, 2016 (81 FR 51370), and reflect all subsequent commercial bluefish quota transfers completed to date. For information of previous transfers for fishing year 2016, visit: *http://go.usa.gov/xZT8H.*

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22868 Filed 9–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE897

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of shortraker rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2016 total allowable catch of shortraker rockfish in the Central Regulatory Area of the GOA has been reached. This closure does not apply to vessels participating in the catcher/processor cooperative fishery in the Rockfish Program.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 19, 2016, through 2400 hours, A.l.t., December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 total allowable catch (TAC) of shortraker rockfish in the Central Regulatory Area of the GOA by vessels not participating in the catcher/processor cooperative fishery in the Rockfish Program is 181 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of shortraker rockfish in the Central Regulatory Area of the GOA by vessels not participating in the catcher/processor cooperative fishery in the Rockfish Program has been reached. Therefore, NMFS is requiring that shortraker rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b). This closure does not apply to vessels participating in the catcher/processor cooperative fishery in the Rockfish Program.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of shortraker rockfish in the Central Regulatory Area of the GOA for vessels not participating in the catcher/processor cooperative fishery in the Rockfish Program. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 16, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §§ 679.20 and 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–22862 Filed 9–19–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 184
Thursday, September 22, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0009]

RIN 0579–AE19

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period and clarification.

SUMMARY: We are extending the comment period for our proposed rule to amend the horse protection regulations to provide that the Animal and Plant Health Inspection Service will train and license inspectors to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. This action will allow interested persons additional time to prepare and submit comments. We are also making a clarification to the proposed regulations pertaining to specific prohibitions concerning exhibitors.

DATES: The comment period for the proposed rule published on July 26, 2016 (81 FR 49112) is extended. We will consider all comments that we receive on or before October 26, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0009, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Kay Carter-Corker, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3751.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2016, we published in the **Federal Register** (81 FR 49112–49137, Docket No. APHIS–2011–0009) a proposal to revise the Horse Protection Act regulations in 9 CFR part 11 to improve our enforcement of the Act and regulations. The proposed rule provides that the Animal and Plant Health Inspection Service (APHIS) will train and license inspectors to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. The proposed rule also proposes changes to the list of devices, equipment, substances, and practices that can cause soring or are otherwise prohibited under the Act and regulations, as well as other amendments pertaining to horse inspections and show management.

Comments on the proposed rule were required to be received on or before September 26, 2016. We are extending the comment period on Docket No. APHIS–2011–0009 for an additional 30 days. This action will allow interested persons more time to prepare and submit comments.

Clarification

As part of our proposed rule, we proposed to retitle § 11.2 as "Prohibited actions, practices, devices, and substances" and to prohibit all action devices, pads, and substances applied to a horse's limbs. Also prohibited is any practice involving a horse, and, as a result of such practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving. These proposed changes were intended to successfully and significantly reduce the number of sored horses shown, exhibited, sold, and auctioned. In our proposed changes to § 11.2, we included provisions in proposed paragraph (a)(3) of that section stating that the use of any weight on horses up to 2 years old, except a keg or similar conventional horseshoe is prohibited, as is the use of a horseshoe on horses up to 2 years old that weighs more than 16 ounces. In keeping with the intent of our other proposed changes, we are considering changing proposed paragraph (a)(3) to read "The use of any weight on horses, except a keg or similar conventional horseshoe, is prohibited." We will consider all comments we received on this provision throughout the comment period so that those who have already commented know we will continue to consider their views.

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 16th day of September 2016.

Kevin Shea,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–22855 Filed 9–21–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9111; Directorate Identifier 2016–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. This proposed AD was prompted by reports of single and multiple uncommanded spoiler panel extensions during flight when there was a hydraulic system failure. This proposed AD would require replacing certain spoiler power control units (PCUs) with new or changed PCUs. We are proposing this AD to prevent an

uncommanded extension of spoiler panels in the event of a hydraulic system failure, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9111.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9111; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Myra Kuck, Aerospace Engineer, Cabin Safety/Mechanical & Environmental Systems branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *myra.j.kuck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9111; Directorate Identifier 2016–NM–132–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of single and multiple uncommanded spoiler panel extensions during flight. The condition known as "spoiler panel float" occurred when there was a hydraulic system pressure loss and the flaps were extended beyond 20 degrees. A subsequent investigation determined that the spoiler PCUs' blocking and thermal relief valve (BTRV) housings had reached a point of fatigue that made them likely to develop internal failures. One purpose of the spoiler PCU BTRV is to prevent the spoiler panel from extending during a loss of hydraulic pressure. An uncommanded extension of spoiler panels, in the event of a hydraulic system failure, could result in the loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–27A0154, dated July 22, 2016. The service information describes procedures for replacing certain spoiler PCUs with new or changed PCUs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9111.

Costs of Compliance

We estimate that this proposed AD affects 573 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of six PCUs	8 work-hours × $85 per hour = $680	$32,652	$33,332	$19,099,236

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9111; Directorate Identifier 2016–NM–132–AD.

(a) Comments Due Date

We must receive comments by November 7, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 757–27A0154, dated July 22, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 27; Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of single and multiple uncommanded spoiler panel extensions during flight when there was a hydraulic system failure. We are issuing this AD to prevent an uncommanded extension of spoiler panels in the event of a hydraulic system failure, which could result in loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement

Within 51 months after the effective date of this AD: Replace each spoiler power control unit (PCU) with a new or changed PCU at spoiler positions 2, 3, and 4 on the left wing, and spoiler positions 9, 10, and 11 on the right wing, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0154, dated July 22, 2016.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Myra Kuck, Aerospace Engineer, Cabin Safety/Mechanical & Environmental Systems branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *myra.j.kuck@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 12, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22697 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2004

[Docket Number USTR–2016–0016]

RIN 0350–AA10

Production or Disclosure of Records, Information and Employee Testimony in Legal Proceedings

AGENCY: Office of the United States Trade Representative.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is renaming and reorganizing part 2004 to include all of the rules governing disclosure of records and information by USTR. Part 2004 will include four subparts—subpart A will contain definitions used throughout part 2004, subpart B will implement the Freedom of Information Act, subpart C will implement the Privacy Act of 1974, and subpart D will govern how USTR responds to official demands and informal requests for records, information or employee testimony in connection with legal proceedings in which neither the United States nor USTR is a party. This proposed rule

would establish subpart A, which contains definitions used throughout part 2004, and subpart D, which includes the requirements and procedures for demanding or requesting parties to submit demands or requests, and factors for USTR to consider in determining whether USTR employees will provide records, information or testimony relating to their official duties.

DATES: We must receive your written comments on or before November 21, 2016.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number for this rulemaking is USTR–2016–0016. USTR invites comments on all aspects of the proposed rule, and will revise the language as appropriate after taking all timely comments into consideration. Copies of all comments will be available for public viewing at *www.regulations.gov* upon completion of processing. You can view a submission by entering the docket number USTR–2016–0016 in the search field at *http://www.regulations.gov.* We will post comments without change and will include any personal information you provide, such as your name, mailing address, email address, and telephone number.

FOR FURTHER INFORMATION CONTACT: Janice Kaye, Monique Ricker or Melissa Keppel, Office of General Counsel, United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509, *jkaye@ustr.eop.gov; mricker@ustr.eop.gov; mkeppel@ustr.eop.gov;* 202–395–3150.

SUPPLEMENTARY INFORMATION:

I. Background

Federal agencies often receive formal demands (including subpoenas) or informal requests to produce records, information or testimony in judicial, legislative or administrative proceedings in which those agencies or the United States is not a named party. Many federal agencies have issued regulations to address the submission, evaluation and processing of these demands or requests. They have done so because responding to these demands or requests can be burdensome, may disrupt an agency employee's work schedule, may involve the agency in issues unrelated to its responsibilities, may divert agency resources from accomplishing mission critical functions, and may impede the agency's accomplishment of its mission and goals. Standard rules alleviate these difficulties by ensuring timely notice and centralized, objective decision making. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), holding that agencies may issue rules governing record production and employee testimony. These rules are commonly referred to as "Touhy rules."

The proposed rule will establish a USTR Touhy rule that governs the process we use to authorize or deny such demands. It prohibits USTR employees from producing records, information or testimony in response to demands or requests, unless the demands or requests comply with the rule, *and* USTR grants permission for the production. Compliance with the rule is necessary, but not sufficient, for production to occur. The rule identifies the information that demanding or requesting parties must provide and the factors that USTR may consider when evaluating demands or requests.

We are renaming and reorganizing 15 CFR part 2004, which will include all of the rules governing disclosure of records and information by USTR. Part 2004 will include four subparts—subpart A will contain definitions used throughout part 2004, subpart B will implement the Freedom of Information Act, 5 U.S.C. 552, subpart C will implement the Privacy Act of 1974, 5 U.S.C. 552a, and subpart D will establish the USTR Touhy rule.

II. Section-by-Section Analysis

Subpart A: Definitions

Section 2004.0—Definitions: This section sets forth definitions of select terms that are used throughout Part 2004.

Subpart D: Touhy Rule

Section 2004.30—Purpose and scope: This section describes the proposed rule's scope, which includes internal agency operations. It also sets forth the rule's purpose, which is to specify the manner in which, and standards by which, demands or requests for records, information or testimony must be submitted, evaluated and processed.

Section 2004.31—Definitions: This section defines terms relevant to this subpart.

Section 2004.32—Production prohibited unless approved: This section bars producing USTR records, information or testimony in response to a demand or request without proper written authorization.

Section 2004.33—Factors the General Counsel May Consider: This section sets forth factors that the USTR General Counsel may consider when evaluating demands or requests.

Section 2004.34—Submitting demands and requests: This section describes the manner in which demands or requests for USTR records, information or testimony must be submitted. It prescribes the information that must be included in the demand or request and explains limitations on the scope of production or testimony. It also explains the consequences of failing to meet requirements in this subpart and the limited instances in which we may waive them.

Section 2004.35—Processing demands and requests: This section describes how we will process demands or requests and establishes deadlines.

Section 2004.36—Restrictions that apply to testimony: This section authorizes the imposition of conditions on USTR employee testimony.

Section 2004.37—Restrictions that apply to released records and information: This section authorizes the imposition of conditions on production of USTR records or information.

Section 2004.38—In the event of an adverse ruling: This section directs persons in possession of USTR information to decline to comply with a court order that conflicts with a USTR determination. It establishes an administrative mechanism by which parties aggrieved by a USTR determination about a demand or request may seek reconsideration of that determination. This section also establishes a petition for USTR reconsideration as a prerequisite to judicial review.

Section 2004.39—Fees: This section describes USTR's entitlement to fees arising from the production of requested records, information or testimony.

III. Regulatory Flexibility Act

USTR has considered the impact of the proposed rule and determined that if adopted as a final rule it is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to USTR's internal operations and legal obligations. *See* 5 U.S.C. 601 *et seq.*

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 2004

Administrative practice and procedure, Courts, Disclosure, Exemptions, Freedom of information, Government employees, Privacy, Records, Subpoenas, Testimony.

■ For the reasons stated in the preamble, the Office of the United States Trade Representative is proposing to revise part 2004 of chapter XX of title 15 of the Code of Federal Regulations to read as follows:

PART 2004—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—Definitions

Sec.
2004.0 Definitions.

Subpart B—Freedom of Information Act Policies and Procedures

2004.1 through 2004.9 [Reserved]

Subpart C—Privacy Act Policies and Procedures

2004.10 through 2004.29 [Reserved]

Subpart D—Production or Disclosure of Records, Information and Employee Testimony in Legal Proceedings

2004.30 Purpose and scope.
2004.31 Definitions.
2004.32 Production prohibited unless approved.
2004.33 Factors the General Counsel may consider.
2004.34 Submitting demands and requests.
2004.35 Processing demands and requests.
2004.36 Restrictions that apply to testimony.
2004.37 Restrictions that apply to released records or information.
2004.38 In the event of an adverse ruling.
2004.39 Fees.

Subpart A—Definitions

Authority: 19 U.S.C. 2171(e)(3).

§ 2004.0 Definitions.

For purposes of this part:

Days, unless otherwise indicated, means working days, and does not include Saturdays, Sundays, and legal public holidays. If the last day of a specified period falls on a Saturday, Sunday, or legal public holiday, the period will be extended until the next working day.

FOIA means the Freedom of Information Act, as amended, 5 U.S.C. 552.

Privacy Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

USTR means the Office of the United States Trade Representative.

Subpart D—Production or Disclosure of USTR Records, Information and Employee Testimony in Legal Proceedings

Authority: 5 U.S.C. 301; 19 U.S.C. 2171(e)(3).

§ 2004.30 Purpose and scope.

(a) *Why are we issuing this rule?* This subpart establishes the procedures USTR will follow when any federal, state or local government court or other authority seeks production of USTR records or information, or testimony relating to an employee's official duties, in the context of a legal proceeding. Parties seeking records, information or testimony must comply with these requirements when submitting demands or requests to USTR.

(b) *What does this rule cover?* This subpart applies to demands or requests for records, information or testimony in legal proceedings in which USTR is not a named party. It does not apply to: Demands or requests for a USTR employee to testify as to facts or events that are unrelated to his or her official duties or to USTR's functions; FOIA or Privacy Act requests; or Congressional demands or requests for records or testimony.

(c) *Not a waiver.* (1) By providing these policies and procedures, USTR does not waive the sovereign immunity of the United States.

(2) The production of records, information or testimony pursuant to this subpart does not constitute a waiver by USTR of any privilege.

(d) This subpart provides guidance for USTR's internal operations and does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against USTR or the United States.

§ 2004.31 Definitions.

For purposes of this subpart:

Demand means a request, order, subpoena or other demand of a federal, state or local court or other authority for records, information or employee testimony in a legal proceeding in which USTR is not a named party.

Employee means any current or former employee or officer of USTR, including contractors, detailees, interns, and any individual who has served or is serving in any consulting or advisory capacity to USTR, whether formal or informal.

General Counsel means USTR's General Counsel or a person within USTR's Office of General Counsel to whom the General Counsel has delegated authority to act under this subpart.

Legal proceeding means any matter, including all phases of litigation, before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding.

Records or *Information* means all documents and materials that are USTR agency records under the FOIA; any original or copy of a record or other property, no matter what media, contained in USTR files; and any other information or materials acquired by a USTR employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, in connection with a legal proceeding, seeking production of records, information or testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations and recorded interviews made by an individual about USTR information in connection with a legal proceeding.

§ 2004.32 Production prohibited unless approved.

(a) *Approval required.* An employee or any other person or entity in possession of records or information may not produce those records or information, or provide any testimony related to the records or information, in response to any demand or request without prior written approval from the General Counsel.

(b) *Penalties.* Any person or entity that fails to comply with this subpart may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current employee also may be subject to administrative or disciplinary proceedings.

§ 2004.33 Factors the General Counsel may consider.

The General Counsel may grant an employee permission to testify regarding USTR matters and to produce records and information in response to a demand or request. Among the relevant factors the General Counsel may consider in making this determination are whether:

(a) The requested records, information or testimony are reasonable in scope, relevant and material to the pending action, and unavailable from other sources such as a non-USTR employee, or a USTR employee other than the employee named.

(b) Production of the records, information or testimony might result in USTR appearing to favor one litigant over another.

(c) USTR has an interest in the decision that may be rendered in the legal proceeding.

(d) Approving the demand or request would assist or hinder USTR in performing statutory duties or unduly burden USTR resources.

(e) The demand or request is unduly burdensome or otherwise inappropriate under the rules of discovery or procedure governing the case or matter in which the demand or request arose.

(f) Production of the records, information or testimony might violate or be inconsistent with a statute, Executive Order, regulation or other legal authority.

(g) Disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege.

(h) Disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure.

(i) Disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(j) Any other appropriate factor.

§ 2004.34 Submitting demands and requests.

(a) *Where do I send a demand or request?* To make a demand or request for records, information or testimony you should write directly to the General Counsel. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your demand or request to *TOUHY@ustr.eop.gov.* The mailing address is General Counsel, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/ Door 123, 250 Murray Lane SW., Washington, DC 20509. To ensure delivery, you should mark the subject line of your email or your envelope and letter "Touhy Request."

(b) *When should I submit it?* You should submit your demand or request at least 45 calendar days in advance of the date on which the records, information or testimony is needed.

(c) *What must be included?* A demand or request must include an affidavit or, if that is not feasible, a clear and concise statement by the party or his or her counsel summarizing the legal and factual issues in the proceeding and explaining how the records, information or testimony will contribute substantially to the resolution of one or more specifically identified issues.

A demand or request for testimony also must include an estimate of the amount of time that the employee will need to devote to the process of testifying (including anticipated travel time and anticipated duration of round trip travel), plus a showing that no document or the testimony of non-USTR persons, including retained experts, could suffice in lieu of the employee's testimony.

(d) *Limits.* The General Counsel will limit any authorization for testimony to the scope of the demand, and the scope of permissible production of records and information to that set forth in the written authorization.

(e) *Failure to meet requirements and exceptions.* USTR may oppose any demand or request that does not meet the requirements set forth in this subpart. The General Counsel may grant exceptions to the requirements in this subpart upon a showing of compelling need, to promote a significant interest of USTR or the United States, or for other good cause.

§ 2004.35 Processing demands and requests.

(a) The General Counsel will review a request or demand to produce or disclose records, information or testimony and determine whether, or under what conditions, to authorize the employee to testify regarding USTR matters or produce records and information. The General Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions on disclosure.

(b) When necessary, the General Counsel will coordinate with the U.S. Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(c) The General Counsel will process demands and requests in the order in which they are received. Absent unusual circumstances and depending on the scope of the demand or request, the General Counsel will respond within 45 calendar days of the date USTR receives all information necessary to evaluate the demand or request.

§ 2004.36 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of USTR employees including, for example, limiting the scope of testimony or requiring the requester and other parties to the legal proceeding to agree that the testimony transcript will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel also may require a copy of the testimony transcript at the requester's expense.

(b) USTR may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this subpart, an employee may testify as to relevant facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee must not:

(1) Disclose classified, confidential or privileged information; or

(2) For a current USTR employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or USTR's mission or functions, unless testimony is provided on behalf of the United States. A former employee can provide expert or opinion testimony where the testimony involves only general expertise gained while employed as a USTR employee.

§ 2004.37 Restrictions that apply to released records and information.

(a) The General Counsel may impose conditions or restrictions on the release of records and information, including requiring the parties to the legal proceeding to obtain a protective order or to execute a confidentiality agreement to limit access and further disclosure. The terms of a protective order or confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements already have been executed, USTR may condition the release of records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, USTR may present original records for examination in response to a demand or request, but the records cannot be marked or altered or presented as evidence or otherwise used in a manner by which they could lose their status as original records. In lieu of original records, certified copies will be presented for evidentiary purposes. (*See* 28 U.S.C. 1733).

§ 2004.38 In the event of an adverse ruling.

(a) Notwithstanding USTR's rejection of a demand or request for records, information or testimony, if a court or other competent authority orders a USTR employee to comply with the demand, the employee promptly must notify the General Counsel of the order, and must respectfully decline to comply, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

(b) To seek reconsideration of USTR's rejection of a demand or request, or of any restrictions on receiving records, information or testimony, a requester must send a petition for reconsideration in accordance with § 2004.34(a) within 10 days of the date of the determination. The petition must contain a clear and concise statement of the basis for the reconsideration with supporting authorities. Determinations about petitions for reconsideration are within the discretion of the United States Trade Representative or his/her designee, and are final.

(c) Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition for reconsideration of a final determination under this section is a prerequisite to judicial review.

§ 2004.39 Fees.

(a) USTR may condition the production of records, information or an employee's appearance on advance payment of reasonable costs, which may include but are not limited to those associated with employee search time, copying, computer usage, and certifications.

(b) Witness fees will include fees, expenses and allowances prescribed by the rules applicable to the particular legal proceeding. If no fees are prescribed, USTR will base fees on the rule of the federal district court closest to the location where the witness will appear. Such fees may include but are not limited to time for preparation, travel and attendance at the legal proceeding.

Janice Kaye,

Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.

[FR Doc. 2016–22864 Filed 9–21–16; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AP74

Authority To Solicit Gifts and Donations; Withdrawal

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is withdrawing VA's proposed rulemaking, published on July 11, 2016, to amend its regulation giving the Under Secretary of Memorial Affairs (USMA), or his designee, authority to solicit gifts and donations. VA received two supportive comments and no adverse comments concerning the proposed rule and its companion substantially identical direct final rule published in the **Federal Register** on the same date. Accordingly, this document withdraws as unnecessary the proposed rule.

DATES: The proposed rule published on July 11, 2016, 81 FR 44827, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Thomas Howard, Chief of Staff, National Cemetery Administration (NCA), Department of Veterans Affairs, (40A), 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6215. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on July 11, 2016, 81 FR 44827, VA proposed to amend 38 Code of Federal Regulations (CFR) 38.603(b) that prohibits the solicitation of contributions. On the same date, VA published a substantially identical direct final rule at 81 FR 44792. The direct final rule and proposed rule each provided a 30-day comment period that ended on August 10, 2016. Two public comments were received, both in support of the rulemakings. Because no adverse comments were received, VA is withdrawing the proposed rule as unnecessary. In a companion document in this issue of the **Federal Register**, VA is confirming the effective date of September 9, 2016 for the direct final rule, RIN 2900–AP75, published at 81 FR 44792.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 16, 2016, for publication.

Dated: September 19, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–22833 Filed 9–21–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0359; FRL–9952–73–Region 4]

Air Plan Approval; TN; Revisions to the Knox County Portion of the TN SIP

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on January 11, 2016. The proposed revision was submitted by TDEC on behalf of the Knox County Department of Air Quality Management, which has jurisdiction over Knox County, Tennessee. The revision that EPA is proposing for approval amends the Knox County Air Quality Management Department's regulations, which are part of the Tennessee SIP, to address EPA's startup, shutdown, and malfunction (SSM) SIP call for Knox County. EPA is proposing approval of the January 11, 2016, SIP revision because the Agency has determined that it is in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before October 24, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0359 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9644. Ms. Sanchez can also be reached via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing today?

EPA is proposing to approve a revision to the Tennessee SIP at Knox County Regulation Section 32.0, "Use of Evidence." The revision would remove the existing text of provision Section 32.1(C), which states: "A determination that there has been a violation of these regulations or orders issued pursuant thereto shall not be used in any lawsuit brought by any private citizen." This text would be replaced with "(Reserved)." TDEC submitted the January 11, 2016, SIP revision to address EPA's final action entitled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015), hereafter referred to as the "SSM SIP Action."

II. What is the background for EPA's proposed action?

On June 30, 2011, the Sierra Club (the Petitioner) filed a petition for rulemaking with the EPA Administrator, asking EPA to take action on specific provisions in the SIPs of 39 states. The petition included interrelated requests concerning state rule treatment of excess emissions by sources during periods of SSM. Exemptions from emission limits during periods of SSM exist in a number of state rules, some of which were adopted and approved into SIPs by EPA many years ago. The petition alleged that SSM exemptions undermine the emission limits in SIPs and threaten states' abilities to achieve and maintain compliance with national ambient air quality standards, thereby threatening public health and public welfare. The Petitioner requested that EPA either (i) notify the states of the substantial inadequacies in their SIPs and finalize a rule requiring them to revise their plans pursuant to CAA section 110(k)(5) (referred to as a "SIP call"), or (ii) determine that EPA's action approving the implementation plan provisions was in error and revise those approvals so that the SIPs are brought into compliance with the requirements of the CAA pursuant to CAA section 110(k)(6).

On February 22, 2013 (78 FR 12459), EPA proposed an action that would either grant or deny the Sierra Club petition with respect to each of the SIP provisions alleged to be inconsistent with the CAA. That proposal summarizes EPA's review of all of the provisions that were identified in the petition, providing a detailed analysis of each provision and explaining how each one either does or does not comply with the CAA with regard to excess emission events. For each SIP provision that appeared to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5) of the CAA.

On May 22, 2015, the EPA Administrator signed the final SSM SIP Action. That action responds to the Sierra Club petition by granting it with respect to the provisions determined to be deficient and denying it with respect to the others. The final action responds to all public comments received on the proposed action and calls for 36 states to submit corrective SIP revisions by November 22, 2016, to bring specified provisions into compliance with the CAA. In addition, the final action reiterates EPA's interpretation of the CAA regarding excess emissions during SSM periods and clarifies EPA's longstanding SSM Policy as it applies to SIPs.

With regard to the Knox County portion of the Tennessee SIP, the Petitioner objected to Regulation 32.1(C), arguing that the provision prevents required reports of SSM conditions from being used as evidence in citizen suits, thereby undermining the express authorization of citizen enforcement actions under the CAA. After consideration of public comments on the SSM SIP proposal, EPA agreed that the Knox County rule is inconsistent with the fundamental requirements of CAA sections 113(e)(1), 114(c) and 304 and the credible evidence rule[1] for the reasons fully explained in Section IX.E.11 of the SSM SIP proposal. Therefore, EPA determined in its final SIP call action that Knox County Regulation 32.1(C) is substantially inadequate to meet CAA requirements and thus issued a SIP call requiring the State to submit a corrective SIP revision addressing this provision. *See* 80 FR 33965.

III. Why is EPA proposing this action?

In the SSM SIP Action, EPA granted the Sierra Club's petition with respect to Knox County Regulation 32.1(C), finding this provision substantially inadequate to meet CAA requirements. Today's action, if finalized, would remove the existing text of this provision from Knox County's EPA-approved SIP regulation. EPA is proposing to find that this revision is consistent with the CAA and that it adequately addresses the SSM SIP call with respect to the Knox County portion of the Tennessee SIP.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Knox County Regulation 32.0 entitled "Use of Evidence," effective November 12, 2015, which replaces the language previously included in Section 32.1(C) with "(Reserved)." EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the Tennessee SIP revision consisting of replacing the language in Section 32.1(C) currently in the EPA-approved SIP for Knox County with "(Reserved)." EPA is proposing approval of the January 11, 2016, SIP revision because the Agency has determined that it is in accordance with the requirements for SIP provisions under the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a

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[1] 40 CFR 51.212(c); *see also* "Credible Evidence Revisions," 62 FR 8314 (Feb. 24, 1997).

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 13, 2016.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2016–22761 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2003–0010; FRL–9952–80–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Omaha Lead Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete 294 residential parcels of the Omaha Lead, Superfund Site (Site) located in Omaha, Nebraska, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Nebraska, through the Nebraska Department of Environmental Quality, determined that all appropriate Response actions under CERCLA were completed at the identified parcels. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to 294 residential parcels. The remaining parcels will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received on or before October 24, 2016.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2003–0010, by one of the following methods: *http://www.regulations.gov;* by email to *kemp.steve@epa.gov* or *freeman.tamara@epa.gov*; or by mail to U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 Attention: Steve Kemp, SUPR Division or Tamara Freeman, ECO Office. For comments submitted to *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For any manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

The docket contains the information that was the basis for the partial deletion, specifically the documentation regarding the results of soil cleanup activities. Information regarding the optional voluntary cleanup activities such as the lead-based paint stabilization and interior dust sampling is not provided in the docket but is available from EPA on a case-by-case basis. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Region 7 Records Center/docket at 11201 Renner Boulevard, Lenexa, Kansas 66219. The Omaha public libraries also have computer resources available to assist the public. The W. Dale Clark Library, located at 215 S. 15th Street, Omaha, NE 68102 is centrally located within the site boundary.

FOR FURTHER INFORMATION CONTACT: Steve Kemp, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7, SUPR/LMSE, 11201 Renner Boulevard, Lenexa, KS 66219, telephone (913) 551–7194, email: *kemp.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Background and Basis for Intended Partial Site Deletion

I. Introduction

EPA Region 7 is proposing to delete 294 residential parcels of the Omaha

Lead Superfund site (Site), from the National Priorities List (NPL) and is requesting public comment on this proposed action. The table of 294 Properties Proposed for the Second Partial Deletion of Properties from the Omaha Lead Superfund site 2016 (EPA–HQ–SFUND–2003–0010–1849) identifies specific properties included for this proposed partial deletion. The location of the 294 properties are shown on Figure 1 "2016 Partial Deletion Omaha Lead Site" (EPA–HQ–SFUND–2003–0010–1848). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Omaha Lead Superfund site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (November 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the 294 residential parcels of the Omaha Lead Superfund Site and demonstrates how they meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the 294 residential parcels of the Site:

(1) EPA consulted with the State before developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the state 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of Nebraska, through the Nebraska Department of Environmental Quality, has concurred with the deletion of the 294 residential parcels of the Omaha Lead Superfund site, from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, Omaha World Herald. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket, and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the 294 residential parcels. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the 294 residential parcels of the Omaha Lead Superfund site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Background and Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the 294 residential parcels of the Omaha Lead Superfund site from the NPL, as previously identified.

Site Background and History

The Omaha Lead Site (OLS or Site [CERCLIS ID #NESFN0703481]) includes surface soils present at residential properties, child-care centers, and other residential-type properties in the city of Omaha, Douglas County, Nebraska. The properties were contaminated as a result of deposition of aerial emissions from historic lead smelting and refining operations. The OLS encompasses the eastern portion of the greater metropolitan area in Omaha, Nebraska. The site extends from the Douglas-Sarpy County line on the south, north to Read Street and from the Missouri River on the east to 56th Street on the west. The Site is centered around downtown Omaha, Nebraska, where two former lead-processing facilities operated. American Smelting and Refining Company, Inc. (ASARCO) operated a lead refinery at 500 Douglas Street in Omaha, Nebraska, for over 120 years. Aaron Ferer & Sons Company (Aaron Ferer), and later Gould Electronics, Inc., (Gould) operated a lead battery recycling plant located at 555 Farnam Street. Both ASARCO and Aaron Ferer/Gould facilities released lead-containing particulates into the atmosphere from their smokestacks. The lead particles were subsequently deposited on surrounding residential properties.

Beginning in 1984, the Douglas County Health Department (DCHD) monitored ambient air quality around the ASARCO facility. This air monitoring routinely measured ambient air lead concentrations in excess of the ambient air standard. Between 1972 and 1998 the DCHD measured the blood lead level in children within the county. The results of the measurements indicated a high incidence of elevated blood lead level in children. Blood lead screening of children living in zip codes located east of 45th Street have consistently exceeded the 10 microgram per deciliter (μg/dl) health-based threshold more frequently than children living elsewhere in the county.

In 1998, the Omaha City Council requested assistance from the EPA to address the high incidence of children found with elevated blood lead levels by the DCHD. In 1999, the EPA initiated an investigation into the lead contamination under the authority of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On April 30, 2003, the OLS was listed on the NPL (68 FR 23094).

The OLS includes those residential properties where EPA determines through soil sampling that soil lead levels represent an unacceptable risk to human health. Residential properties where soil sampling indicates that lead concentrations in the soil are below a level that represent an unacceptable risk are not included in the Site. Residential properties include those with high accessibility to sensitive populations (children seven years of age and younger [0 to 84 months] and pregnant or nursing women). The properties include single and multi-family dwellings, apartment complexes, child daycare facilities, vacant lots in residential areas, schools, churches, community centers, parks, greenways, and any other areas where children may be exposed to site-related contaminated media. Commercial and industrial properties are excluded from the definition of the Site.

The residential properties proposed for deletion from the NPL site were cleaned up under both CERCLA removal and remedial authority. Regardless of the authority used for the remediation of yards, the cleanup levels for soils for all the properties proposed for deletion were the same.

Response Actions

The initial EPA response was conducted under CERCLA removal authority. Due to the size of the site and the very large number of individual properties, it was necessary to prioritize sites for clean up. The prioritization was based on factors such as the elevated blood level of children at each property and the lead concentration in the soil at each property. The result was a series of action levels that reflected the priority of categories of sites. Consequently, the action level for the site changed over time from 2500 mg/kg to 400 mg/kg, as the highest priority sites were cleaned up first. The cleanup level was established using the Integrated Exposure Uptake Biokinetic (IEUBK) model to determine the concentration to which the lead is cleaned up at each property within the site. The cleanup level for the OLS is 400 mg/kg of lead in the soil. The cleanup level of 400 mg/kg was selected to allow for unlimited use and unrestricted exposure. The cleanup level has not changed, and all properties, regardless of the action level, were cleaned up to 400 mg/kg.

Removal Activities

Beginning in March 1999, the EPA began collecting soil samples from properties that provided licensed child daycare services. The initial removal action dated August 2, 1999, consisted of excavation and replacement of contaminated soil where the lead concentration exceeded the action levels identified in the Action Memorandum. Response actions were implemented at properties that met either of the following criteria:

- A child seven years of age or younger (0 to 84 months) residing at the property was identified with an elevated blood level (EBL) exceeding 15 μg/dl (this EBL was reduced to 10 μg/dl in August 2001) and a soil sample collected from a non-foundation quadrant exhibited lead concentrations greater than 400 mg/kg, and
- A property was used as a child-care facility and a soil sample collected from a non-foundation quadrant exhibited a lead concentration greater than 400 mg/kg.

On August 22, 2002, EPA initiated a second removal action. This second removal action included all other residential type properties where the maximum non-foundation soil lead concentration exceeded an action level of 2,500 mg/kg. The 2002 Action Memorandum explicitly identifies the possibility of lead-based paint as a potential contributor to lead contamination of soils within thirty inches of the foundation of a painted structure. Due to the potential contribution of deteriorating lead-based paint near the foundations of structures, a lead concentration greater than 400 mg/kg in the soil in the drip zone (areas near structure foundations) was not, in itself, sufficient to trigger soil removal. However, if a soil sample from any mid-yard quadrant exceeded the action level, soil was removed from all areas of the property exceeding the 400 mg/kg cleanup level, including the drip zone. In November 2003, EPA amended the second removal action to reduce the action level to 1,200 mg/kg. In March 2004, EPA amended the second removal action to combine the two removal actions. In March 2005, EPA amended the removal action to reduce the action level from 1200 mg/kg to 800 mg/kg.

At properties determined to be eligible for response under either of the Action Memoranda soil with lead concentrations greater than the cleanup level was excavated and replaced with clean soil and the excavated areas were revegetated.

Beginning with the construction season of 2005, the scope of the removal action was expanded to address the requirements of the 2004 Interim ROD to include: (1) Stabilization of deteriorating exterior lead-based paint at properties where the continued effectiveness of the soil remediation was threatened; (2) response to interior dust at properties where interior dust lead levels exceeded applicable criteria; (3) public health education; and (4) participation in a comprehensive remedy with other agencies and organizations that addresses all identified lead hazards in the Omaha community.

Remedial Investigation/Feasibility Study (RI/FS)—Human Health Risk Assessment

As part of the RI/FS EPA developed a Human Health Risk Assessment (HHRA) for the Site using site-specific information collected during the OLS Remedial Investigation. Lead was identified as the primary contaminant of concern. The HHRA also identified arsenic as a potential contaminant of concern, but arsenic was eliminated based on its relatively low overall risk to residents and lack of connection to the release from the industrial sources being addressed by this Superfund action.

The risk assessment for lead focused on young children under the age of seven (0 to 84 months) who are site residents. Young children are most susceptible to lead exposure because they have higher contact rates with soil or dust, absorb lead more readily than adults absorb, and are more sensitive to the adverse effects of lead than are older children and adults. The effect of greatest concern in children is impairment of the nervous system, including learning deficits, reduced intelligence, and adverse effects on behavior. The IEUBK model for lead in children was used to evaluate the risks posed to young children (0 to 84 months) resulting from the lead contamination at the site. Because lead does not have a nationally-approved reference dose (RfD), cancer slope factor, or other accepted toxicological factor which can be used to assess risk, standard risk assessment methods cannot be used to evaluate the health risks associated with lead contamination. The modeling results determined that there was an unacceptable risk to young children from exposure to soils above 400 mg/kg.

In October 2008, EPA released a draft Final Remedial Investigation. Based on the 2008 data set, EPA established the boundary of the Final Focus Area for the Site. The Final Focus Area is generally bounded by Read Street to the north, 56th Street to the west, Harrison Street (Sarpy County line) to the south, and the Missouri River to the east, and encompasses 17,280 acres (27.0 square miles). By the time the Final Remedial Investigation was completed, EPA had collected soil samples from 37,076 residential properties, including 34,565 properties within the Final Focus Area's boundary. In total, 34.2 percent of properties sampled through completion of the 2008 RI had at least one mid-yard sample with a soil lead level exceeding 400 mg/kg. In addition to soil sampling, EPA collected dust samples from the interior of 159 residences to support the OLS Human Health Risk Assessment.

Record of Decision

EPA completed the Final Record of Decision (ROD) for the OLS in May 2009. The Remedial Action Objective is to reduce the risk of exposure of young children to lead such that an individual child, or group of similarly exposed children, have no greater than a 5 percent chance of having a blood-lead concentration exceeding 10 µg/dl. The selected remedy include the following components:

- Excavation and Replacement of Soils Exceeding 400 mg/kg Lead
- Stabilization of Deteriorating Exterior Lead-Based Paint
- Response to Lead-Contaminated Interior Dust
- Health Education
- Operation of a Local Lead Hazard Registry as a type of Institutional Control

Each of these components is described below.

Remedial Actions

Excavation and Replacement of Soils Exceeding 400 mg/kg Lead

Excavation of soils was accomplished using lightweight excavation equipment and hand tools in the portions of the yard where the concentration of lead in the surface soil exceeded 400 mg/kg. Excavation continued in all quadrants, play zones, and drip zone areas exceeding 400 mg/kg lead until the residual lead concentration measured at the exposed surface of the excavation was less than 400 mg/kg in the upper foot, or less than 1,200 mg/kg at depths greater than one foot. Typically, soil excavation depths were between six and ten inches in depth. Soils in garden areas were excavated until reaching a residual concentration of less than 400 mg/kg in the upper two feet measured from the original surface, or less than 1,200 mg/kg at depths greater than two feet.

After confirmation sampling verified that cleanup goals were achieved, the excavated areas were backfilled with clean soil to original grade and sod was placed over the remediated areas.

EPA's remediation contractors stockpiled contaminated soil in staging areas, collected samples, and subsequently transported soil to an off-site subtitle D solid waste disposal landfill for use as daily cover and/or disposal.

Stabilization of Deteriorating Exterior Lead-Based Paint

EPA used the lead-based paint assessment protocol, presented in the Final Lead-Based Paint Recontamination Study Report prepared for the OLS, to determine eligibility for exterior lead-based paint stabilization at those properties where soil lead concentrations exceed 400 mg/kg. At those properties where the exterior lead-based paint assessment identified a threat from deteriorating paint to the continued protectiveness of the soil remedy, the owner of the property was offered stabilization of painted surfaces on structures located on the property. Exterior lead-based paint stabilization is not mandatory and was provided to those qualifying property owners who chose to have their exterior paint stabilized. Removal of loose and flaking lead-based paint was performed using lead-safe practices as described in EPA's Renovate, Repair and Painting Rule. The practices include wet scraping, and collection of paint chips using plastic sheeting. Scraped areas were primed and all previously painted surfaces had two coats of paint applied.

Response to Lead-Contaminated Interior Dust

As part of the final remedy, residents at eligible properties are provided the opportunity to have interior dust sampled. The interior dust response is not mandatory and the resident may choose to decline. If the property owner agrees, EPA collects samples of dust from interior surfaces. The analytical data is provided to the resident/tenant in a letter and the letter informs them whether any HUD criteria are exceeded. The Douglas County Health Department conducts follow up activities at any residence where the concentration of lead in the interior dust levels exceed the HUD criteria. For those residences that qualify and where the resident agrees, the residents are provided with a high-efficiency household vacuum cleaner, training on the maintenance and the importance of proper usage of the vacuum, and education on mitigation of household lead hazards. The Douglas County Health Department also provides training and education regarding the need to mitigate interior dust.

Exterior lead-based paint stabilization and interior dust response were conducted retroactively at properties where soil cleanups were performed under CERCLA removal authority, as well as to properties addressed under CERCLA remedial authority.

Health Education

There are a number of identified lead hazards within the OLS, not all of which are connected to the contaminant source of the OLS. To better address all potential lead sources within the OLS, a health education program was developed and continues to be implemented to increase public awareness and mitigate exposure. An active educational program continues in cooperation with agencies and organizations that include ATSDR, the Nebraska Department of Health and Human Services (NDHHS), DCHD, local non-governmental organizations, and other interested parties throughout the duration of the remedial action. The following, although not an exhaustive list, indicate the types of educational activities provided at the Site:

- Support for in-home assessments for children identified with elevated blood lead levels.
- Development and implementation of lead poisoning prevention curriculum in schools.
- Support for efforts to increase community-wide blood lead monitoring.
- Physicians' education for diagnosis, treatment, and surveillance of lead exposure.
- Operation of Public Information Centers to distribute information, and respond to questions about the EPA response activities and lead hazards in the community.
- Use of mass media (television, radio, internet, print media, etc.) to distribute health education messages.

Development and distribution of informational tools such as fact sheets, brochures, refrigerator magnets, etc., to inform the public about lead hazards and measures that can be taken to avoid or eliminate exposure.

Institutional Controls

The Omaha Lead Registry, (available at *www.omahalead.org*) is a GIS based database that provides the public with on-line access to the status of the EPA investigation and response actions. EPA notifies residents and property owners about the information that is available through the lead hazard registry as part of the transmittal sent at the completion of soil remediation at each individual property.

Community Involvement

EPA worked extensively with the Omaha community through a variety of communication vehicles including, but not limited to: Local speaking engagements, participation in citizens' groups and city council meetings, local public access television, public service announcements on local cable television, coverage on radio, television, in local and national newspapers, mass mailings of informational materials, public outreach by telephone, conducting public meetings, and through the EPA Web site.

EPA has been performing outreach to Omaha citizens, elected officials, school officials, health officials, the media, nonprofit groups, and others since becoming involved in the project in an effort to convey information about the hazards of lead poisoning, particularly the ways that lead affects the health of children. The EPA participated in numerous formal and informal meetings to explain EPA's role and commitment in Omaha, convey information about the Superfund process, and provide general information about the site and lead contamination. EPA responds to inquiries on a daily basis regarding the site and individual property owner's sampling results.

In January 2004, a Community Advisory Group (CAG) was formed for the OLS site. A CAG is a committee, task force, or board made up of residents affected by a Superfund site. They provided a public forum where representatives with diverse community interests could present and discuss their needs and concerns related to the site and the cleanup process. The CAG was discontinued after the last meeting was held in October 2011. A new group, Child Lead Poisoning Prevention Group, formed. The first meeting of the Child Lead Poisoning Group was held at City Hall in May 2012. The Group is no longer active.

Five-Year Review

EPA completed the first Five-Year Review for the site in September 2014. Five-Year Reviews for the site are statutory. The triggering action for the Five-Year Review is the completion of the Final Record of Decision for Operable Unit 2, completed in May 2009.

The protectiveness of the remedy was deferred in the Five-Year Review because the remedy has not been completed at all of the properties within the site boundary. However, clean up activities at the 294 residential parcels included in this partial deletion action are complete and protective of human health.

The next Five-Year Review will be completed in 2019.

Summary of EPA Work Completed

Soil Testing and Remediation

EPA Region 7 completed the EPA lead portion of the remedial action on December 29, 2015. The City of Omaha and the Douglas County Health Department will be performing the remaining field work. As of December 29, 2015, EPA collected soil samples from 42,047 properties. There are 489 remaining properties to be sampled. The EPA has obtained access to collect samples from 163 of the 489 properties.

Based on the soil sampling results, 14,019 properties were eligible for soil remediation. The EPA remediated lead contaminated soil at 13,090 properties (93 percent) of the properties that were eligible for remediation. There are approximately 929 remaining properties that are eligible for soil remediation. The EPA obtained access to remediate fifty-one of the remaining properties.

Lead-Based Paint Testing and Stabilization

The EPA tested 12,057 properties for the presence of lead-based paint (LBP) and determined 6,782 properties qualified for LBP stabilization. The EPA has completed LBP stabilization on 6,249, (92 percent) of the eligible properties.

Dust Sampling

The EPA collected dust samples from 3,933 properties consisting of 4,477 residences for lead contaminated dust. These numbers reflect the fact that some of the properties are multi-residence properties.

Continuing Remedial Action

EPA completed Cooperative Agreements with the City of Omaha and the Douglas County Health Department that provide funds to allow these local government agencies to continue efforts to obtain access to the remaining properties and conduct sampling and remediation activities at those properties where they obtain access.

Determination That the Criteria for Deletion Has Been Achieved

In accordance with 40 CFR 300.425(e), Region 7 of the EPA finds that the 294 residential parcels of the Omaha Lead Superfund site (the subject of this deletion) meet the substantive criteria for deletion from the NPL. EPA has consulted with and has the concurrence of the State of Nebraska.

All responsible parties or other persons have implemented all appropriate response actions required. All appropriate Fund-financed response under CERCLA was implemented, and no further response action by responsible parties is appropriate.

List of Subjects in 40 CFR Part 300

Environmental protection, air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757,3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: September 12, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–22877 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 100

[167A2100DD/AAKC001030/A0A501010.999900]

RIN 1093–AA20

Appraisals and Valuations of Indian Property

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: Congress recently passed the Indian Trust Asset Reform Act (ITARA), which requires the Secretary of the Interior to establish and publish in the **Federal Register** minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property. This proposed rule would establish the minimum qualifications and would also implement provisions of ITARA that require the Secretary to accept appraisals and valuations without additional review or approval under certain circumstances.

DATES: Please submit written comments by November 21, 2016.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* The proposed rule is listed under the agency name "Office of the Secretary" and has been assigned Docket ID: DOI–2016–0005. If you would like to submit comments through the Federal e-Rulemaking Portal, go to *www.regulations.gov* and follow the instructions.

—*Email: Elizabeth.appel@bia.gov.* Include the number "1093–AA20" in the subject line of the message.

—*Mail or hand-delivery:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240. Include the number "1093–AA20" on the envelope. Please note, email or *www.regulations.gov* are the preferred methods for submitting comments; there is no need to submit a hard copy if you have submitted the comments through either of these electronic methods.

Comments on the Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov* or by facsimile at (202) 395–5806. Please also send a copy of your comments to *comments@bia.gov.*

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action—Indian Affairs at *elizabeth.appel@bia.gov* or (202) 273–4680.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Proposed Rule
III. Tribal Consultation
IV. Specific Questions on Which the Department Seeks Comment
V. Procedural Requirements
  A. Regulatory Planning and Review (E.O. 12866)
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Unfunded Mandates Reform Act
  E. Takings (E.O. 12630)
  F. Federalism (E.O. 13132)
  G. Civil Justice Reform (E.O. 12988)
  H. Consultation With Indian Tribes (E.O. 13175)
  I. Paperwork Reduction Act
  J. National Environmental Policy Act
  K. Effects on the Energy Supply (E.O. 13211)
  L. Clarity of This Regulation
  M. Public Availability of Comments

I. Background

On June 22, 2016, President Obama signed into law the Indian Trust Asset Reform Act, Public Law 114–178. Title III of this Act. In relevance to this rulemaking, the Act requires Interior to establish minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allow an appraisal or valuation by a qualified person to be considered final without being reviewed or approved by Interior.

This proposed rule would establish the minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allow an appraisal or valuation by a qualified person to be considered final without being reviewed or approved by Interior.

The Act also requires appraisals and valuations of Indian trust property to be administered by a single administrative entity within Interior. This rule is proposed under the Office of the Secretary for Department of the Interior, but may be finalized by another entity or agency within Interior depending on what single entity ultimately administers appraisals and valuations of Indian trust property.

II. Summary of Proposed Rule

This rule would establish a new Code of Federal Regulations (CFR) part to establish the minimum qualifications for appraisers, employed by or under contract with an Indian tribe or individual Indian, to become qualified appraisers who may prepare an appraisal or valuation of Indian property that will, in certain circumstances, be accepted by the Department without further review or approval. We note that, because the Department is not reviewing and approving the appraisal or valuation, it is not liable for any deficiency or inaccuracy in the appraisal or valuation.

Subpart A, General Provisions, would define terms used in the regulation, describe the purpose of the regulation, and provide the standard Paperwork Reduction Act compliance statement. The terms are defined to include, in the context of this regulation, any property that the U.S. Government holds in trust or restricted status for an Indian tribe or individual Indian, to include not just land, but also natural resources or other assets. Other important terms include "appraisal," "valuation," and "qualified appraiser." Consistent with the statutory direction, the purpose of the regulations is written broadly, to include appraisals or valuations of any Indian trust property, including:

- Appraisals and valuations of real property;
- Appraisals and valuations of timber, minerals, or other property to the extent they contribute to the value of the whole property (for use in appraisals and valuations of real property); and
- Appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property.

Subpart B, Appraiser Qualifications, would establish the minimum qualifications an appraiser must meet to be considered a "qualified appraiser" and would establish that the Secretary must verify that the appraiser meets those minimum qualifications. The Department seeks comment as to whether these minimum qualifications are appropriate for both real property appraisals and valuations and for appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property.

This subpart would require that the verification information be submitted contemporaneously with the appraisal or valuation so that the Secretary can verify that the appraiser is a qualified appraiser at that point in time. The Department seeks ideas for allowing for verification in a way that would not require submission with each appraisal, but would ensure there were no changes in the appraiser's qualifications (*e.g.,* the appraiser no longer holds a current Certified General Appraiser license) at the time the appraisal is submitted.

Subpart C, Appraisals and Valuations, would require the submission of appraisals and valuations to the Department for transactions requiring Secretarial approval under titles 25 and 43 of the Code of Federal Regulations (*e.g.,* 25 CFR 162, Leases and Permits; 25 CFR 169, Rights-of-Way on Indian Land). This subpart also sets out the circumstances in which the Department will forego review and approval of the appraisal or valuation. The proposed rule would require submission of the appraisal or valuation to the Department regardless of whether the Department will be reviewing and approving the appraisal or valuation. This requirement is included because the Department must use the results of the appraisal or valuation in completing the transaction requiring Secretarial approval.

The proposed rule would require the Department to forego review and approval of the appraisal or valuation and consider the appraisal or valuation final if three conditions are met: (1) The appraisal or valuation was completed by a qualified appraiser; (2) the Indian tribe or individual Indian expressed their intent to waive Departmental review and approval; and (3) no owner of any interest in the Indian property objects to the use of the appraisal or valuation without Departmental review and approval. The first condition is clearly required by ITARA. The second condition is implied by ITARA. The number of individual Indian owners of fractionated tracts that must express their intent to waive Departmental review and approval, under the second condition, would depend upon the underlying title 43 or title 25 requirements. For example, if the underlying transaction is a right-of-way, then the owners of a majority of the interests in the tract must express their intent to waive Departmental review and approval, consistent with the general consent requirements in 25 CFR part 169. The third condition, that no Indian property owner objects, is necessary to address situations where one or more owners of the tract still want Departmental review and approval of the appraisal or valuation, consistent with our trust responsibility to all owners of the Indian trust property.

This subpart proposes to exempt certain transactions, thereby requiring Departmental review of the appraisal or valuation. The exempted transactions include any legislation expressly requiring the Department to review and approve an appraisal or valuation, such as the Land Buy Back Program under Claims Resolution Act of 2010 (Pub. L. 111–291), and purchase at probate under 43 CFR part 30, because the judge will not be in a position to verify an appraiser's qualifications.

III. Tribal Consultation

The Department is hosting listening sessions and consultation sessions with Indian tribes and trust beneficiaries on each of the items in Title III of ITARA (see "I. Background" for the list of items) at the dates and locations announced in 81 FR 47176 (July 20, 2016), as corrected by 81 FR 51210 (August 3, 2016). The Department will also consult on this proposed rule at those listening sessions and consultation sessions.

IV. Specific Questions on Which the Department Seeks Comment

The Department seeks comment on any aspect of this rule that commenters wish to comment on, but also specifically poses the following questions for your consideration in commenting:

1. Do any tribes grant Certified General Appraiser licenses similar to those granted by States? If so, are the prerequisite requirements of individuals receiving this license consistent with the requirements established by the Appraisal Qualifications Board for State certification?
2. Are the minimum qualifications in this regulation appropriate for appraisals and valuations of timber, minerals, or other property separate from appraisals and valuations of real property? If not, what qualifications would be better suited to those appraisals and valuations?
3. Is there a way to allow for the Department to verify an appraiser's qualifications, without requiring the qualifications to be submitted with each appraisal, that would ensure the appraiser is qualified at the time the appraisal is submitted (and that there have been no changes in the appraiser's qualifications)?

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and any economic effects on small entities (*e.g.*, the cost to obtain an appraiser license) would be incurred as part of their normal cost of doing business.

C. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian tribes that will result from this rulemaking. Tribes may be substantially and directly affected by this rulemaking because it allows for the submission of appraisals for transactions involving Indian property without Departmental review and approval. As such, the Department is consulting with tribes on this proposed rule as part of the consultation sessions addressing ITARA.

I. Paperwork Reduction Act

This proposed rule contains an information collection that requires approval by OMB. The Department is seeking approval of a new information collection and a revision to an existing regulation, as follows.

OMB Control Number: 1076—NEW.

Title: Appraisals & Valuations of Indian Property, 43 CFR 100.

Brief Description of Collection: The Department is proposing to establish minimum qualifications for appraisers of Indian property that require the submission of the appraiser's qualifications to the Department for verification. Submission of the appraisal or valuation itself is already authorized by other OMB Control Numbers under the associated 43 CFR or 25 CFR part (for example, the submission of appraisals for leasing of Indian land is included in the lease information collection authorized by OMB Control Number 1076–0181).

Type of Review: New collection.

Respondents: Individuals and Private Sector.

Obligation to Respond: To Obtain or Retain a Benefit

Number of Respondents: 155.

Number of Responses: 465.

Frequency of Response: 3 per year, on average.

Estimated Time per Response: One hour.

Estimated Total Annual Hour Burden: 465 hours.

Estimated Total Annual Non-Hour Cost Burden: $0.

A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

J. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 100

Indians, Indians—claims, Indians—lands, Mineral resources.

■ For the reasons given in the preamble, the Department of the Interior proposes to amend 43 CFR subtitle A, to add part 100 to read as follows:

Title 43—Public Lands; Interior

Subtitle A—Office of the Secretary of the Interior

Department of the Interior

PART 100—APPRAISALS AND VALUATIONS OF INDIAN PROPERTY

Subpart A—General Provisions

Sec.
100.100 What terms should I know for this part?
100.101 What is the purpose of this part?
100.102 Does this part apply to me?
100.103 How does the Paperwork Reduction Act affect this part?

Subpart B—Appraiser Qualifications

100.200 What are the minimum qualifications for qualified appraisers?
100.201 Does a qualified appraiser have authority to conduct appraisals or valuations of any type of Indian property?
100.202 Will the Secretary verify the appraiser's qualifications?
100.203 What must the tribe or individual Indian submit to the Secretary for verification of the appraiser's qualifications?
100.204 When must the tribe or individual Indian submit a package for Secretarial verification of appraiser qualifications?

Subpart C—Appraisals and Valuations

100.300 Must I submit an appraisal or valuation to the Department?
100.301 Will the Department review and approve by appraisal or valuation?
100.302 May I request Departmental review of an appraisal even if a qualified appraiser completed the appraisal or valuation?
100.303 What happens if the Indian tribe or individual Indian does not agree with the submitted appraisal or valuation?

Authority: 5 U.S.C. 301; Pub. L. 114–178.

Subpart A—General Provisions

§ 100.100 What terms I should know for this part?

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Appraiser means one who is expected to perform an appraisal or valuation competently and in a manner that is independent, impartial, and objective.

Indian means:

(1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian property means trust property or restricted property.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Land Buy-Back Program for Tribal Nations means the program implementing the land consolidation provisions of the settlement agreement in *Cobell* v. *Salazar,* No. 1:96CV01285–JR (D.D.C.), as confirmed by Congress in the Claims Resolution Act of 2010 (Pub. L. 111–291).

Qualified appraiser means an appraiser that is authorized to prepare an appraisal or valuation of Indian property because he or she meets the minimum qualifications of this part.

Qualifications statement means a written overview of an appraiser's education, professional history and job qualifications, providing an indication of an appraiser's competency to perform specific types of assignments. The qualifications may include information regarding education (degrees and educational institutions or programs); professional affiliations, designations, certifications, and licenses; work experience (including companies or organizations, the dates of employment, job titles and duties, and any service as an expert witness); awards and publications; types of properties appraised; types of appraisal and valuation assignments; and clients.

Restricted property means lands, natural resources, or other assets owned by Indian tribes or individual Indians that can only be alienated or encumbered with the approval of the United States because of limitations contained in the conveyance instrument, or limitations in Federal law.

Secretary means the Secretary of the Interior or an authorized representative.

Trust property means lands, natural resources, or other assets held by the United States in trust for Indian tribes or individual Indians.

Us/we/our means the single bureau, agency, or entity within the Department of the Interior that administers appraisals and valuations of Indian property.

Valuation means all other valuation methods or a market analysis, such as a general description of market trends, values, or benchmarks, prepared by a qualified appraiser.

§ 100.101 What is the purpose of this part?

This part describes the minimum qualifications for appraisers, employed by or under contract with an Indian tribe or individual Indian, to become qualified appraisers who may prepare an appraisal or valuation of Indian property that will be accepted by the Department without further review or approval.

§ 100.102 Does this part apply to me?

This part applies to anyone preparing or relying upon an appraisal or valuation of Indian property.

§ 100.103 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076—NEW. Response is required to obtain a benefit.

Subpart B—Appraiser Qualifications

§ 100.200 What are the minimum qualifications for qualified appraisers?

(a) An appraiser must meet the following minimum qualifications to be a qualified appraiser under this part:

(1) The appraiser must hold a current Certified General Appraiser license in the State in which the property appraised or valued is located;

(2) The appraiser must be in good standing with the appraiser regulatory agency of the State in which the property appraised or valued is located; and

(3) The appraiser must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) rules and provisions applicable to appraisers (including but not limited to Competency requirements applicable to the type of property being appraised or valued and Ethics requirements). This includes competency in timber and mineral valuations if applicable to the subject property.

§ 100.201 Does a qualified appraiser have the authority to conduct appraisals or valuations of any type of Indian property?

All qualified appraisers of Indian property must meet the Competency requirements of USPAP for the type of property being appraised or valued. Competency can be demonstrated by previous completed assignments on the type of properties being appraised, additional education or training in specific property types, or membership and/or professional designation by a related professional appraisal association or group.

§ 100.202 Will the Secretary verify the appraiser's qualifications?

The Secretary will verify the appraiser's qualifications to determine whether the appraiser meets the requirements of § 100.200.

§ 100.203 What must the tribe or individual Indian submit to the Secretary for a verification of the appraiser's qualifications?

The tribe or individual Indian must submit the following with the appraisal or valuation:

(a) A copy of the appraiser's current Certified General Appraiser license;

(b) A copy of the appraiser's qualifications statement;

(c) The appraiser's self-certification that the appraiser meets the criteria in § 100.200; and

(d) If the property contains natural resource elements that contribute to the value of the property, such as timber or minerals, a list of the appraiser's additional qualifications for the specific type of property being valued in the appraisal report.

§ 100.204 When must the tribe or individual Indian submit a package for Secretarial verification of appraiser qualifications?

The tribe or individual Indian must submit the package of appraiser qualifications to the Secretary with the appraisal or valuation.

Subpart C—Appraisals and Valuations

§ 100.300 Must I submit an appraisal or valuation to the Department?

Appraisals and valuations must be submitted to us for transactions requiring Secretarial approval under titles 25 and 43 of the CFR.

§ 100.301 Will the Department review and approve my appraisal or valuation?

(a) The Department will not review the appraisal or valuation of Indian property and the appraisal or valuation will be considered final as long as:

(1) The submission acknowledges the intent of the Indian tribe or individual

Indian to waive Departmental review and approval;

(2) The appraisal or valuation was completed by a qualified appraiser meeting the requirements of this part; and

(3) No owner of any interest in the Indian property objects to use of the appraisal or valuation without Departmental review and approval.

(b) The Department must review and approve the appraisal or valuation if:

(1) Any of the criteria in paragraph (a) of this section are not met; or

(2) The appraisal or valuation was submitted for:

(i) Purchase at probate under 43 CFR 30;

(ii) The Land Buy-Back Program for Tribal Nations; or

(iii) Specific legislation requiring the Department to review and approve an appraisal or valuation.

§ 100.302 May I request Departmental review of an appraisal even if a qualified appraiser completed the appraisal or valuation?

If you do not specifically request waiver of Departmental review and approval under § 100.300(a)(1), the Department will review the appraisal or valuation.

§ 100.303 What happens if the Indian tribe or individual Indian does not agree with the submitted appraisal or valuation?

If the Indian tribe or individual Indian does not agree with the submitted appraisal or valuation, the Indian tribe or individual Indian may request that the Department perform an appraisal or valuation instead of relying on the submitted appraisal or valuation.

Dated: September 7, 2016.

Michael L. Connor,

Deputy Secretary.

[FR Doc. 2016–22650 Filed 9–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2015–0112; 4500030113]

RIN 1018–BB66

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rusty Patched Bumble Bee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the rusty patched bumble bee (*Bombus affinis*) as endangered or threatened under the Endangered Species Act, as amended (Act). After review of the best available scientific and commercial information, we find that listing the rusty patched bumble bee is warranted. Accordingly, we propose to list the rusty patched bumble bee, a species that occurs in the eastern and midwestern United States and Ontario, Canada, as an endangered species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife.

DATES: We will accept comments received or postmarked on or before November 21, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 7, 2016.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2015–0112, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2015–0112; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments* below for more information).

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office, 4101 American Blvd. E., Bloomington, MN 55425, by telephone 952–252–0092, extension 210. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a proposed rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule. This rulemaking will propose the listing of the rusty patched bumble bee (*Bombus affinis*) as an endangered species.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. While the exact cause of the species' decline is uncertain, the primary causes attributed to the decline include habitat loss and degradation, pathogens, pesticides, and small population dynamics.

We will seek peer review. We sought comments on the species status assessment (SSA) from independent specialists to ensure that our analysis was based on scientifically sound data, assumptions, and analyses. We will also invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

An SSA team prepared an SSA report for the rusty patched bumble bee. The SSA team was composed of U.S. Fish and Wildlife Service biologists, in consultation with other species experts. The SSA represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the rusty patched bumble bee. The SSA underwent independent peer review by 15 scientists with expertise in bumble bee biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA and other materials relating to this proposal can be found on the Midwest Region Web site at *http://www.fws.gov/midwest/Endangered/* and at *http://www.regulations.gov* under docket number FWS–R3–ES–2015–0112.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The rusty patched bumble bee's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns (in particular, we are interested in the locations and dates of surveys targeting bumble bees within the historical range of the rusty patched bumble bee, including negative survey results);

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing conservation measures or regulations that may be addressing those threats.

(4) The reasons why any habitat should or should not be determined to be critical habitat for the rusty patched bumble bee as provided by section 4 of the Act, including physical or biological features within areas that are occupied or specific areas outside of the geographic area that are occupied that are essential for the conservation of the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments *only* by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Twin Cities Ecological Service Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we sought the expert opinions of 25 appropriate and independent specialists regarding the Species Status Assessment, which informed this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in bumble bee biology, habitat, and stressors (factors negatively affecting the species) to the species. We invite additional comment from the peer reviewers during this public comment period.

Previous Federal Action

We received a petition from The Xerces Society for Invertebrate Conservation (Xerces Society) to list the rusty patched bumble bee as an endangered species on February 5, 2013. On May 13, 2014, the Xerces Society filed a lawsuit against the Service for failure to complete a petition finding in accordance with statutory deadlines. Per a December 24, 2014, settlement agreement with the Xerces Society, we agreed to make a 90-day finding no later than September 30, 2015, and, if that finding were substantial, to complete a 12-month finding no later than September 30, 2016. On September 18, 2015, we published in the **Federal Register** a 90-day finding that the petition presented substantial information indicating that listing the species may be warranted (80 FR 56423). We then conducted a status review, and this proposed listing rule constitutes our 12-month petition finding for the species.

Background

A thorough review of the taxonomy, life history, and ecology of the rusty patched bumble bee (*Bombus affinis*) is presented in the species status assessment report (Szymanski *et al.* 2016, Chapter 2; available at *http://www.fws.gov/midwest/Endangered/* and at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2015–0112). All bumble bees, including the rusty patched, belong to the genus *Bombus* (within the family Apidae) (Williams *et al.* 2008, p. 53).

The rusty patched bumble bee is a eusocial (highly social) organism forming colonies consisting of a single queen, female workers, and males. Colony sizes of *B. affinis* are considered large compared to other bumble bees, and healthy colonies may consist of up to 1,000 individual workers in a season (Macfarlane *et al.* 1994, pp. 3–4). Queens and workers differ slightly in size and coloration; queens are larger than workers (Plath 1922, p. 192, Mitchell 1962, p. 518). All rusty patched bumble bees have entirely black heads, but only workers and males have a rusty reddish patch centrally located on the abdomen.

The rusty patched bumble bee's annual cycle begins in early spring with colony initiation by solitary queens and progresses with the production of workers throughout the summer and ending with the production of reproductive individuals (males and potential queens) in mid- to late summer and early fall (Macfarlane *et al.* 1994, p. 4; Colla and Dumesh 2010, p. 45; Plath 1922, p. 192). The males and new queens disperse to mate and the original founding queen, males, and workers die. The new queens go into diapause (a form of hibernation) over winter. The following spring, the queen, or foundress, searches for suitable nest sites and collects nectar and pollen from flowers to support the production of her eggs, which are fertilized by sperm she has stored since mating the previous fall. She is solely responsible for establishing the colony. As the workers hatch and the colony grows, they assume the responsibility of food collection, colony defense, and care of the young, while the foundress remains within the nest and continues to lay eggs. During later stages of colony development, in mid-July or August to September, the new queens and males hatch from eggs. At the end of the season the foundress dies and the new queens (gynes, or reproductive females) mate before hibernating.

The rusty patched bumble bee has been observed and collected in a variety of habitats, including prairies, woodlands, marshes, agricultural landscapes, and residential parks and gardens (Colla and Packer 2008, p. 1381; Colla and Dumesh 2010, p. 46; USFWS rusty patched bumble bee unpublished geodatabase 2016). The species requires areas that support sufficient food (nectar and pollen from diverse and abundant flowers), undisturbed nesting sites in proximity to floral resources, and overwintering sites for hibernating queens (Goulson *et al.* 2015, p. 2; Potts *et al.* 2010, p. 349). Rusty patched bumble bees live in temperate climates, and are not likely to survive prolonged periods of high temperatures (over 35 °Celsius (C) (95 °F (F)) (Goulson 2016, pers. comm.).

Bumble bees are generalist foragers, meaning they gather pollen and nectar from a wide variety of flowering plants (Xerces 2013, pp. 27–28). The rusty patched bumble bee is one of the first bumble bees to emerge early in the spring and the last to go into hibernation, so to meet its nutritional needs, the species requires a constant and diverse supply of blooming flowers.

Rusty patched bumble bee nests are typically in abandoned rodent nests or other similar cavities (Plath 1922, pp. 190–191; Macfarlane *et al.* 1994, p. 4). Little is known about the overwintering habitats of rusty patched bumble bee foundress queens, but other species of *Bombus* typically form a chamber in soft soil, a few centimeters deep, and sometimes use compost or mole hills to overwinter (Goulson 2010, p. 11).

Prior to the mid- to late 1990s, the rusty patched bumble bee was widely distributed across areas of 31 States/Provinces: Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Ontario, Pennsylvania, Quebec, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Since 2000, the rusty patched bumble bee has been reported from 13 States/Provinces: Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, North Carolina/Tennessee (single record on the border between the States), Ontario, Ohio, Pennsylvania, Virginia, and Wisconsin (Figure 1).

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive assessment of the biological status of the rusty patched bumble bee, and prepared a report of the assessment, which provides a thorough account of the species' overall viability. We define viability as the ability of the species to persist over the long term and, conversely, to avoid extinction. In this section, we summarize the conclusions of that assessment, which can be accessed at Docket No. FWS–R3–ES–2015–0112 on *http://www.regulations.gov* and at *http://www.fws.gov/midwest/Endangered/.* The reader is directed to the Rusty Patched Bumble Bee (*Bombus affinis*) Species Status Assessment (SSA report; Szymanski *et al.* 2016) for a detailed discussion of our evaluation of the biological status of the rusty patched bumble bee and the influences that may affect its continued existence.

To assess rusty patched bumble bee viability, we used the three conservation biology principles of resiliency, representation, and redundancy (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental stochasticity (for example, wet or dry, warm or cold years); representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes); and redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, hurricanes). In general, the more redundant, representative, and resilient a species is, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

We evaluated the change in resiliency, representation, and redundancy from the past until the present, and projected the anticipated future states of these conditions. To forecast the biological condition into the future, we devised likely future scenarios by eliciting expert information on the primary stressors anticipated in the future to the rusty patched bumble bee: Pathogens, pesticides, habitat loss and degradation, climate change, and small population dynamics. To assess resiliency, we evaluated the trend in rusty patched bumble bee occurrences (populations) over time and the trend in the species abundance relative to all *Bombus* spp. over time. To forecast anticipated future abundance, we used a population model to project the number of populations expected to persist based on plausible future risk scenarios. To assess representation (as an indicator of adaptive capacity) of the rusty patched bumble bee, we evaluated the spatial extent of occurrences over time. At a coarse scale, we tallied the number of counties, States, and ecoregions occupied by the species. Ecoregions are areas defined by environmental conditions including climate, landforms, and soil characteristics. Bailey Ecoregions (Bailey 1983, Bailey *et al.* 1994) and the equivalent Canadian Ecoregions (Ecological Stratification Working Group, 1996) were used. At a finer scale, we calculated the extent of occurrence within each ecoregion (within the historically occupied range) over time. To assess redundancy, we calculated the risk of ecoregion-wide extirpations given the number of populations present historically, currently, and forecasted for 5 to 50 years into the future.

Our analyses indicate that the resiliency, representation, and redundancy of the rusty patched bumble bee have all declined since the late 1990s and are projected to continue to decline over the next several decades. Historically, the species was abundant and widespread, with hundreds of populations across an expansive range, and was the fourth-ranked *Bombus* species in our relative abundance analysis.

Since the late 1990s, rusty patched bumble bee abundance and distribution has declined significantly. The number of populations has declined by 91 percent (from 845 historically (historical = occurrences in the period 1900–1999) to 69 currently (current = occurrences in the period 2000–2015)), and the rusty patched bumble bee's relative abundance declined from 8 percent historically, to 1 percent currently. Many of the current populations, however, have not been reconfirmed since the early 2000s and may no longer persist. For example, no rusty patched bumble bees were observed at any of the historical sites that were revisited in 2015. Also, many of the current populations (64 of 69 (93 percent)) are documented by 5 or fewer individuals; only 2 populations are documented by more than 10 individuals (healthy colonies consist of up to 1,000 individual workers, and a healthy population contains tens to hundreds of colonies (Macfarlane *et al.* 1994, pp. 3–4)).

Along with the loss of populations, a marked decrease in the spatial extent has occurred in recent times. As noted above, the rusty patched bumble bee was broadly distributed historically across the eastern United States, upper Midwest, and southern Quebec and Ontario, an area comprising 15 ecoregions, 31 States/Provinces, and 378 counties. Since 2000, the species' distribution has declined across its range, with current records from 6 ecoregions, 13 States/Provinces, and 41 counties (Figure 1). The spatial extent of the species' current range has been reduced to 8 percent of its historical extent. The loss of occurrences has increased the risk of ecoregion-wide extirpations due to catastrophic events (*i.e.*, severe drought and prolonged, high temperatures).

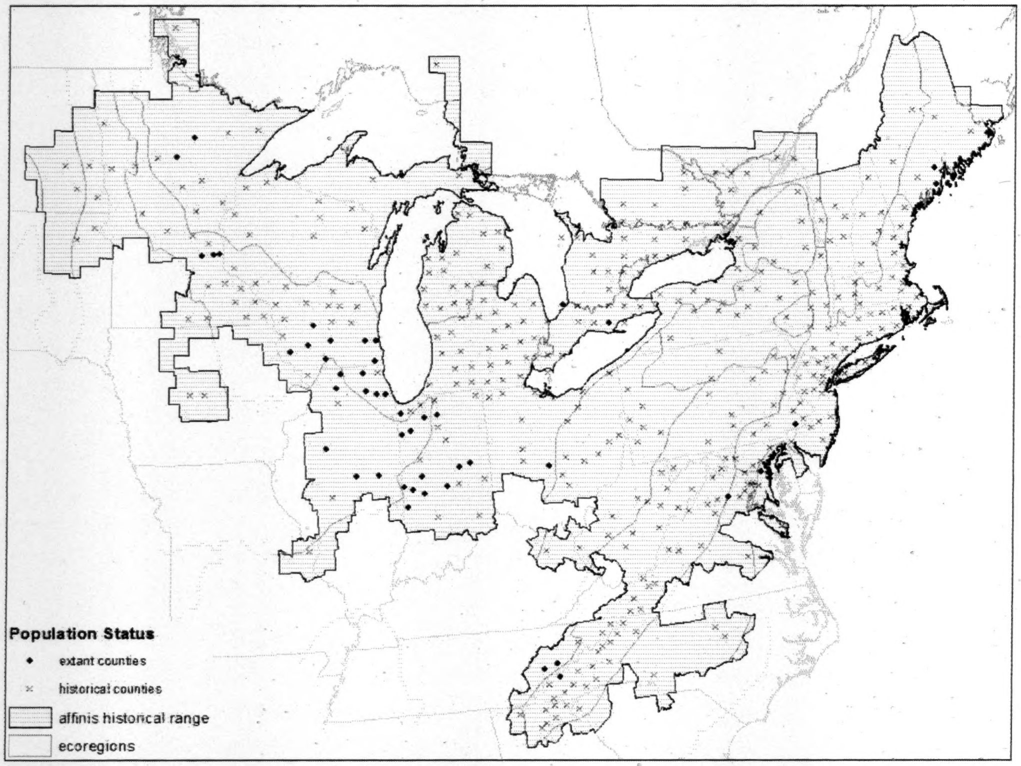

Figure 1. Rusty patched bumble bee range map showing the current distribution. Dots represent counties with a rusty patched bumble bee occurrence since 2000. The X*s* represent counties with historical occurrences only (*i.e.*, no occurrences since 2000). (See Szymanski *et al.* (2016, p. 12) for an explanation of current and historical time periods.)

Many of the existing populations continue to face the effects of past and ongoing stressors, including pathogens, pesticides, habitat loss and degradation, small population dynamics, and climate change. A brief summary of these primary stressors is presented below; for a full description of these stressors, refer to Chapter 5 of the SSA report.

Pathogens—The precipitous decline of several bumble bee species (including the rusty patched) from the mid-1990s to present was contemporaneous with the collapse in populations of commercially bred western bumble bees (*B. occidentalis*), raised primarily to pollinate greenhouse tomato and sweet pepper crops, beginning in the late 1980s (for example, Szabo *et al.* 2012, pp. 232–233). This collapse was attributed to the microsporidium (fungus) *Nosema bombi.* Around the same time, several North American wild bumble bee species also began to decline rapidly (Szabo *et al.* 2012, p. 232). The temporal congruence and speed of these declines led to the suggestion that they were caused by transmission or "spillover" of *N. bombi* from the commercial colonies to wild populations through shared foraging resources. Patterns of losses observed, however, cannot be completely explained by exposure to *N. bombi.* Several experts have surmised that *N. bombi* may not be the culpable (or only culpable) pathogen in the precipitous decline of certain wild bumble bees in North America (for example, Goulson 2016, pers. comm.; Strange and Tripodi 2016, pers. comm.), and the evidence for chronic pathogen spillover from commercial bumble bees as a main cause of decline remains debatable (see various arguments in Colla *et al.* 2006, entire; Otterstatter and Thomson 2008, entire; Szabo *et al.* 2012, entire; Manley *et al.* 2015, entire).

In addition to fungi such as *N. bombi,* other viruses, bacteria, and parasites are being investigated for their effects on bumble bees in North America, such as deformed wing virus, acute bee paralysis, and parasites such as *Crithidia bombi* and *Apicystis bombi* (for example, Szabo *et al.* 2012, p. 237; Manley *et al.* 2015, p. 2; Tripodi 2016, pers. comm.; Goulson *et al.* 2015, p. 3). Little is known about these diseases in bumble bees, and no studies specific to the rusty patched bumble bee have been conducted. Refer to Szymanski *et al.* (2016, pp. 40–43) for a brief summary of those that have the greatest potential to affect the rusty patched bumble bee.

Pesticides—A variety of pesticides are widely used in agricultural, urban, and even natural environments, and native bumble bees are simultaneously exposed to multiple pesticides, including insecticides, fungicides, and herbicides. The pesticides with greatest effects on bumble bees are insecticides and herbicides: Insecticides are specifically designed to directly kill insects, including bumble bees, and herbicides reduce available floral resources, thus indirectly affecting bumble bees. Although the overall toxicity of pesticides to rusty patched or other bumble bees is unknown, pesticides have been documented to have both lethal and sublethal effects (for example, reduced or no male production, reduced or no egg hatch, and reduced queen production and longevity) on bumble bees (for example, Gill *et al.* 2012, p. 107; Mommaerts *et al.* 2006, pp. 3–4; Fauser-Misslin *et al.* 2014, pp. 453–454).

Neonicotinoids are a class of insecticides used to target pests of agricultural crops, forests (for example, emerald ash borer), turf, gardens, and pets and have been strongly implicated as the cause of the decline of bees in general (European Food Safety Authority 2015, p. 4211; Pisa *et al.* 2015, p. 69; Goulson 2013, pp. 7–8), and specifically for rusty patched bumble bees, due to the contemporaneous introduction of neonicotinoid use and the precipitous decline of the species (Colla and Packer 2008, p. 10). The neonicotinoid imidacloprid became widely used in the United States starting in the early 1990s, and clothianidin and thiamethoxam entered the commercial market beginning in the early 2000s (Douglas and Tooker 2015, pp. 5091–5092). The use of neonicotinoids rapidly increased as seed-applied products were introduced in field crops, marking a shift toward large-scale, preemptive insecticide use. If current trends continue, Douglas and Tooker (2015, p. 5093) predict that neonicotinoid use will increase further, through application to more soybeans and other crop species.

Most studies examining the effect of neonicotinoids on bees have been conducted using the European honey bee (*Apis mellifera*) (Lundin *et al.* 2015, p. 7). Bumble bees, however, may be more vulnerable to pesticide exposure for several reasons: (1) They are more susceptible to pesticides applied early in the year, because for one month the entire bumble bee population depends on the success of the queens to forage and establish new colonies; (2) bumble bees forage earlier in the morning and later in the evening than honey bees, thus are susceptible to pesticide applications that are done in the early morning or evening to avoid effects to honey bees; (3) most bumble bees have smaller colonies than honey bees, thus, a single bumble bee worker is more important to the survival of the colony (Thompson and Hunt 1999, p. 155); (4) bumble bees nest underground, thus, are also exposed to pesticide residues in the soil (Arena and Sgolastra 2014, p. 333); and (5) bumble bee larvae consume large amounts of unprocessed pollen (as opposed to honey), and, therefore, are much more exposed to pesticide residues in the pollen (Arena and Sgolastra 2014, p. 333).

Habitat loss and degradation—The rusty patched bumble bee historically occupied native grasslands of the Northeast and upper Midwest; however, much of this landscape has now been lost or is fragmented. Estimates of native grassland losses since European settlement of North America are as high as 99.9 percent (Samson and Knofp 1994, p. 418). Habitat loss is commonly cited as a long-term contributor to bee declines through the 20th century, and may continue to contribute to current declines, at least for some species (Goulson *et al.* 2015, p. 2; Goulson *et al.* 2008; Potts *et al.* 2010, p. 348; Brown and Paxton 2009, pp. 411–412). However, the rusty patched bumble bee may not be as severely affected by habitat loss compared to habitat specialists, such as native prairie endemics, because it is not dependent on specific plant species, but can use a variety of floral resources. Still, loss or degradation of habitat has been shown to reduce both bee diversity and abundance (Potts *et al.* 2010, pp. 348–349). Large monocultures do not support the plant diversity needed to provide food resources throughout the rusty patched bumble bees' long foraging season, and small, isolated patches of habitat may not be sufficient to support healthy bee populations (Hatfield and LeBuhn 2007, pp. 154–156; Öckinger and Smith 2007, pp. 55–56).

Although habitat loss has established negative effects on bumble bees (Goulson *et al.* 2008; Williams and Osborne 2009, pp. 371–373), many feel it is unlikely to be a main driver of the recent, widespread North American bee declines (Szabo *et al.* 2012; p. 236; Colla and Packer 2008, p. 1388; Cameron *et al.* 2011b, p. 665). However, the past effects of habitat loss and degradation may continue to have impacts on bumble bees that are stressed by other factors. If there is less food available or if the bumble bees must expend more energy and time to find food, they are less healthy overall, and, thus, less resilient to other stressors (for example, nutritional stress may decrease the ability to survive parasite infection (Brown *et al.* 2000, pp. 425–426) or cope with pesticides (Goulson *et al.* 2015, p. 5)). Furthermore, bumble bees may be more vulnerable to extinction than other animals because their colonies have long cycles, where reproductive individuals are primarily produced near the end of those cycles. Thus, even slight changes in resource availability could have significant cumulative effects on colony development and productivity (Colla and Packer 2008, p. 1380).

Small population dynamics—The social organization of bees has a large effect on their population biology and genetics (Pamilo and Crozier 1997, entire; Chapman and Bourke 2001, entire; Zayed 2009, entire). The rusty patched bumblebee is a eusocial bee species (cooperative brood care, overlapping generations within a colony of adults, and a division of labor into reproductive and non-reproductive groups), and a population is made up of colonies, rather than individuals. Consequently, the effective population size (number of individuals in a population who contribute offspring to the next generation) is much smaller than the census population size (number of individuals in a population). Genetic effects of small population sizes depend on the effective population size (rather than the actual size), and in the rusty patched bumble bee the effective population sizes are inherently small due to their eusocial structure, haplodiploidy reproduction, and the associated "diploid male vortex."

Like many insect species, the rusty patched bumble bee has haplodiploidy sex differentiation, in which haploid (having one set of chromosomes) males are produced from unfertilized eggs and diploid (containing two complete sets of chromosomes) females from fertilized eggs (Zayed 2009, p. 239). When females mate with related males, however (as is more likely to happen in small populations), half of the females' progeny will develop into diploid males instead of females. Having fewer females decreases the health of the colony, as males do not contribute food resources to the colony (Ellis *et al.* 2006, p. 4376). Additionally, diploid males are mostly unviable, or if viable and mate, produce unviable eggs or sterile daughters (Zayed 2009, p. 239 and references within), so those males that are produced are unable to contribute to next year's cohort. (See Szymanski *et al.* 2016, pp. 17–18 for a more detailed explanation of this life-history characteristic). This reproductive strategy (haplodiploidy) makes the rusty patched bumble bee particularly vulnerable to the effects of a small population size, as the species can experience a phenomenon called a "diploid male vortex," where the proportion of nonviable males increases as abundance declines, thereby further reducing population size. Given this, due to the size of the current populations, some may no longer persist and others are likely already quasi-extirpated (the level at which a population will go extinct, although it is not yet at zero individuals) (Szymanski *et al.* 2016, p. 66).

Effects of climate change—Global climate change is broadly accepted as one of the most significant risks to biodiversity worldwide, however, specific impacts of climate change on pollinators are not well understood. The changes in climate likely to have the greatest effects on bumble bees include: Increased drought, increased flooding, increased storm events, increased temperature and precipitations, early snow melt, late frost, and increased variability in temperatures and precipitation. These climate changes may lead to decreased resource availability (due to mismatches in temporal and spatial co-occurrences, such as availability of floral resources early in the flight period), decreased availability of nesting habitat (due to changes in rodent populations or increased flooding or storms), increased stress from overheating (due to higher temperatures), and increased pressures from pathogens and nonnative species, (Goulson *et al.* 2015, p. 4; Goulson 2016, pers. comm.; Kerr *et al.* 2015, pp. 178–179; Potts *et al.* 2010, p. 351; Cameron *et al.* 2011a, pp. 35–37; Williams and Osborne 2009, p. 371).

Synergistic effects—It is likely that several of the above summarized risk factors are acting synergistically or additively on the species, and the combination of multiple stressors is likely more harmful than a single stressor acting alone. Although the ultimate source of the decline is debated, and despite that the relative role and synergistic effects of the primary stressors are unknown, the acute and widespread decline of rusty patched bumble bees is undisputable.

Beneficial factors—We are aware of only a few specific measures for bumble bee conservation at any of the current rusty patched bumble bee locations in the United States. In Canada, the species was listed as endangered on Schedule 1 of the Species at Risk Act in 2012, and a recovery strategy has been proposed (Environment and Climate Change Canada 2016, entire). However, we are aware of only nine current occurrences (three populations) in Canada. The rusty patched bumble bee is listed as State endangered in Vermont and Special Concern in Connecticut, Michigan, and Wisconsin. Of those four States, Wisconsin is the only State with current records (18 populations). A few organizations have or may soon start monitoring programs, such as Bumble Bee Watch (*www.bumble beewatch.org*), a collaborative citizen science effort to track North American bumble bees, and the Xerces Society. Also, the International Union of Concerned Scientists Conservation Breeding Specialist Group has developed general conservation guidelines for bumble bees (Hatfield *et al.* 2014b, pp. 11–16; Cameron *et al.* 2011a, entire). There is an increased awareness on pollinators, in general, and thus efforts to conserve pollinators may have a fortuitous effect on the rusty patched bumble bee. For example, planting appropriate flowers may contribute to pollinator conservation; however, there is a need to develop regionally appropriate, bumble bee-specific recommendations based on evidence of use (Goulson 2015, p. 6).

In summary, the magnitude of population losses and range contraction to date have greatly reduced the rusty patched bumble bee's ability to adapt to changing environmental conditions and to guard against further losses of adaptive diversity and potential extinction due to catastrophic events. In reality, the few populations persisting and the limited distribution of these populations have substantially reduced the ability of the rusty patched bumble bee to withstand environmental variation, catastrophic events, and changes in physical and biological conditions. Coupled with the increased risk of extirpation due to the interaction of reduced population size and its haplodiploidy reproductive strategy, the rusty patched bumble bee may lack the resiliency required to sustain populations into the future, even without further exposure to stressors.

12-Month Petition Finding on the Rusty Patched Bumble Bee

As required by the Act, we considered the five factors in assessing whether the rusty patched bumblebee is an endangered species, as cited in the petition, throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the bumble bee. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized bumble bee experts and other Federal and State agencies. We identify the threats to the rusty patched bumble bee to be attributable to habitat loss and degradation (Factor A), impacts of pathogens (Factor C), impacts of pesticides (Factor E), the effects of small population size (Factor E), and effects of climate change (Factor E). On the basis of the best scientific and commercial information available, we find that the petitioned action to list the rusty patched bumble bee as an endangered species is warranted. A determination on the status of the species as an endangered or threatened species is presented below in the proposed listing determination.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the rusty patched bumble bee. Habitat loss and degradation from residential and commercial development and agricultural conversion occurred rangewide and resulted in fragmentation and isolation of the species from formerly contiguous native habitat. Habitat loss and degradation has resulted in the loss of the diverse floral resources needed throughout the rusty patched bumble bee's long feeding season, as well as loss of appropriate nesting and overwintering sites. Although much of the habitat conversion occurred in the past, the dramatic reduction and fragmentation of habitat has persistent and ongoing effects on the viability of populations; furthermore, conversion of native habitats to agriculture (*i.e.*, monocultures) or other uses is still occurring today (Factor A).

The species' range has been reduced by 92 percent, and its current distribution is limited to just one to a few populations in each of 12 States and Ontario. Ninety-three percent of the 69 current populations are documented by 5 or fewer individuals, and only 2 populations are documented by more than 10 individuals. Drought frequency and increased duration of high temperatures are likely to increase due to climate change, further restricting floral resources, reducing foraging times, and fragmenting or eliminating populations (Factor E). Fungi such as *N. bombi*, parasites such as *Crithidia bombi* and *Apicystis bombi*, deformed wing virus, acute bee paralysis, and bacteria are all suspected causes of decline for the rusty patched bumble bee (Factor C).

Pesticide use, including the use of many insecticides that have known lethal and sublethal effects to bumble bees, is occurring at increasing levels rangewide (Factor E). Similarly, herbicide use occurs rangewide and can reduce available floral resources (Factor A). Additionally, the rusty patched bumble bee is not able to naturally recolonize unoccupied areas that are not connected by suitable dispersal habitat (Factors A and E).

The rusty patched bumble bee's reproductive strategy makes it particularly vulnerable to the effects of small population size, and the species can experience a "diploid male vortex," where the number of nonviable males increases as abundance declines, thereby further reducing population size (Factor E). There is virtually no redundancy of populations within each occupied ecoregion, further increasing the risk of loss of representation of existing genetic lineages and, ultimately, extinction.

These threats have already resulted in the extirpation of the rusty patched bumble bee throughout an estimated 92 percent of its range, and these threats are likely to continue or increase in severity. Although the relative contribution of pesticides, pathogens, loss of floral resources, and other threats to the species' past and continued decline is not known, the prevailing data indicate that threats are acting synergistically and additively and that the combination of multiple threats is likely more harmful than a single threat acting alone. These threats are occurring rangewide, are expected to continue or increase in the future, and are significant because they further reduce the already limited distribution and decrease the resiliency of the rusty patched bumble bee within those limited areas.

Existing regulatory mechanisms vary across the species' range, and although the rusty patched bumble bee is listed as State endangered in Vermont (which prohibits taking, possessing, or transporting), as special concern (no legal protection) in Connecticut, Michigan, and Wisconsin, and is protected under Canada's Species At Risk Act, these mechanisms do not currently ameliorate threats to the rusty patched bumble bee.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that the rusty patched bumble bee is presently in danger of extinction throughout its entire range. Relative to its historical (pre-2000s) condition, the abundance of rusty patched bumble bees has declined precipitously over a short period of time. Only nine percent of the locations where it was historically found are currently occupied, and the abundance of the species relative to other *Bombus* species has declined from eight percent to one percent. The current spatial extent of occurrence is eight percent of its historical extent.

Further adding to the species' imperilment, its reproductive strategy (haplodiploidy) renders bumble bees particularly sensitive to loss of genetic diversity, which is further exacerbated by decreasing population size (for example, diploid male vortex). The small number of persisting colonies continues to be affected by high-severity stressors, including pathogens, pesticides, habitat loss and degradation, effects of climate change, and small population dynamics throughout all of the species' range. These stressors are acting synergistically and additively on the species, and the combination of multiple stressors is more harmful than a single stressor acting alone. Due to the above factors, the species does not have the adaptive capacity in its current state to withstand physical and biological changes in the environment presently or into the future, and optimistic modeling suggests that all but one of the ecoregions are predicted to be extirpated within 5 years (Szymanski *et al.* 2016, Table 7.3).

In conclusion, the species' overall range has been considerably reduced and the remaining populations are under threat from a variety of factors acting in combination to significantly reduce the overall viability of the species. The risk of extinction is currently high because there are a small number of remaining populations, most of which are extremely small in size (all but 2 have 10 or fewer individuals), in a severely reduced range. Therefore, on the basis of the best available scientific and commercial information, we propose listing the rusty patched bumble bee as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the rusty patched bumble bee because (1) given its current condition, the species lacks the ability to withstand physical and biological changes in the environment presently and into the future; (2) based on the prediction that all but one ecoregion will be extinct within 5 years, the species presently has a high probability of extinction based on its current status; and (3) even were the current stressors to be reduced or eliminated, the species is at high risk of extinction based on small population size effects alone.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the rusty patched bumble bee is endangered throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577; July 1, 2014).

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations in title 50 of the Code of Federal Regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be an endangered or threatened species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (for example, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use, and the use of, all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Critical habitat designation does not allow the government or public to access private lands, nor does it require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult under section 7(a)(2) of the Act, but even if consultation leads to a finding that the action would likely cause destruction or adverse modification of critical habitat, the resulting obligation of the Federal action agency and the landowner is not to restore or recover the species, but rather to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) that are essential to the conservation of the species and (2) that may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed if we determine that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. For example, they require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when any of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. The regulations also provide that, in determining whether a designation of critical habitat would not be beneficial to the species, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat" (50 CFR 424.12(a)(1)(ii)).

We do not know of any imminent threat of take attributed to collection or vandalism for the rusty patched bumble bee. The available information does not indicate that identification and mapping of critical habitat is likely to initiate any threat of collection or vandalism for the bee. Therefore, in the absence of finding that the designation of critical habitat would increase threats to the species, if there are benefits to the species from a critical habitat designation, a finding that designation is prudent is warranted.

The potential benefits of designation may include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the protected species. Because designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, designation of critical habitat may be prudent for the rusty patched bumble bee.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires, within the geographical area occupied by the species, identification of the physical or biological features essential to the species' conservation. Information regarding the rusty patched bumble bee life functions is complex, and complete data are lacking for most of them. We require additional time to analyze the best available scientific data in order to identify specific areas appropriate for critical habitat designation and to prepare and process a proposed rule. Accordingly, we find designation of critical habitat for these species in accordance with section 4(3)(A) of the Act to be "not determinable" at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to address the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a draft and final recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. When completed, the draft recovery plan and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Twin Cities Ecological Service Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin would be eligible for Federal funds to implement management actions that promote the protection or recovery of the rusty patched bumble bee. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the rusty patched bumble bee is only proposed for listing under the Act at this time, please let us know if you are interested in participating in conservation efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands, for example, lands administered by the National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized handling or collecting of the species;

(2) The unauthorized release of biological control agents that attack any life stage of the rusty patched bumble bee, including the unauthorized use of herbicides, pesticides, or other chemicals in habitats in which the rusty patched bumble bee is known to occur;

(3) Unauthorized release of nonnative species or native species that carry pathogens, diseases, or fungi that are known or suspected to adversely affect rusty patched bumble bee where the species is known to occur;

(4) Unauthorized modification, removal, or destruction of the habitat (including vegetation and soils) in which the rusty patched bumble bee is known to occur; and

(5) Unauthorized discharge of chemicals or fill material into any wetlands in which the rusty patched bumble bee is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Twin Cities Ecological Services Field Office and the Region 3 Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h) add an entry for "Bumble bee, rusty patched" to the List of Endangered and Threatened Wildlife in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
INSECTS				
* * * * * * *				
Bumble bee, rusty patched.	*Bombus affinis*	Wherever found	E	[**Federal Register** citation when published as a final rule].
* * * * * * *				

Dated: September 12, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–22799 Filed 9–21–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 184
Thursday, September 22, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0046]

Secretary's Advisory Committee on Animal Health; Intent To Reestablish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are giving notice that the Secretary of Agriculture intends to reestablish the Secretary's Advisory Committee on Animal Health for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. Diane L. Sutton, Designated Federal Officer, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737; (301) 851–3509.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to reestablish the Secretary's Advisory Committee on Animal Health (the Committee) for 2 years.

The Committee advises the Secretary on strategies, policies, and programs to prevent, control, or eradicate animal diseases. The Committee considers agricultural initiatives of national scope and significance and advises on matters of public health, conservation of national resources, stability of livestock economies, livestock disease management and traceability strategies, prioritizing animal health imperatives, and other related aspects of agriculture. The Committee Chairperson and Vice

Done in Washington, DC, this 15th day of September 2016.

Kevin Shea,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–22742 Filed 9–21–16; 8:45 am]

BILLING CODE 3410–34–P

BROADCASTING BOARD OF GOVERNORS

Government in the Sunshine Act Meeting Notice

DATE AND TIME: Wednesday, September 28, 2016, 2:30 p.m. EDT.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its June 23, 2016 meeting, a resolution honoring the 10th anniversary of Voice of America's (VOA) Deewa Service, a resolution honoring the 20th anniversary of VOA's broadcasts in Afan Oromo and Tigrigna, a resolution honoring the 20th anniversary of VOA's broadcasts in Kirundi and Kinyarwanda, and a resolution honoring the 20th anniversary of Radio Free Asia. The Board will receive a report from the Chief Executive Officer and Director of BBG.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public Web site at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *https://bbgboardmeeting sept2016.eventbrite.com* by 12:00 p.m. (EDT) on September 27. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov.*

information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,
Director of Board Operations.

[FR Doc. 2016–22992 Filed 9–20–16; 4:15 pm]

BILLING CODE 86100–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Maryland Advisory Committee to the Commission will convene by conference call at 12:30 p.m. (EST) on the following dates: Friday, October 21, 2016; Friday, November 18, 2016; Friday, December 16, 2016; Friday, January 27, 2017; Friday, February 17, 2017 and Friday, March 17, 2017. The purpose of each planning meeting is to discuss project planning for the Committee's civil rights review.

DATES: The following dates: Friday, October 21, 2016; Friday, November 18, 2016; Friday, December 16, 2016; Friday, January, 27, 2017; Friday, February 17, 2017 and Friday, March 17, 2017.

Time: Each meeting starts at 12:30 p.m. (EST).

Public Call-In Information: Conference call-in number: 1–800–946–0719 and conference call ID: 5397395.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–946–0719 and conference call ID: 5397395. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can

Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–800–946–0719 and conference call ID: 5397395.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=253;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

I. Welcome and Introductions
  —Rollcall
Planning Meeting
  —Discuss Project Planning
II. Emerging Issues
III. Other Business
Adjournment

Dated: September 19, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–22851 Filed 9–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address the results of the 2015 National Content Test on race and ethnicity. The CSAC will meet virtually on Thursday, October 6, 2016. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees Web site for the most current meeting agenda at: *http://www.census.gov/about/cac.html*.

DATES: October 6, 2016. The virtual meeting will begin at approximately 2:00 p.m. ET and end at approximately 4:00 p.m. ET.

ADDRESSES: The meeting will be held via WebEx at the following URL link: *https://census.webex.com/census/j.php?MTID=m8a838a44aa1d499cce581f7bf1432058*. For audio please call the following phone number: 888–790–3565. When prompted, please use the following password: 8267816.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Advisory Committee Branch Chief, Customer Liaison and Marketing Services Office, *tara.t.dunlop@census.gov*, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Members of the CSAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on October 6. Individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line "October 6, 2016 CSAC Virtual Meeting Public Comment"), or by letter submission to the Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H179, 4600 Silver Hill Road, Washington, DC

Dated: September 13, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–22785 Filed 9–21–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

National Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a virtual meeting of the National Advisory Committee (NAC). The Committee will address the results of the 2015 National Content Test on race and ethnicity. The NAC will meet virtually on Monday, October 3, 2016. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees Web site for the most current meeting agenda at: *http://www.census.gov/about/cac.html*.

DATES: October 3, 2016. The virtual meeting will begin at approximately 1:00 p.m. ET and end at approximately 3:00 p.m. ET.

ADDRESSES: The meeting will be held via WebEx at the following URL link: *https://census.webex.com/census/j.php?MTID=m672cd26cdb95b86935763b6bef2f35f9*. For audio please call the following phone number: 888–324–3615. When prompted, please use the following password: 7055861.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Advisory Committee Branch Chief, Customer Liaison and Marketing Services Office, *tara.t.dunlop@census.gov*, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The NAC was established in March 2012 and operates in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10). NAC members are appointed by the Director, U.S. Census Bureau, and consider topics such as hard-to-reach populations, race and ethnicity, language, aging populations, American Indian and Alaska Native tribal considerations, new immigrant

migrant populations, complex households, rural populations, and population segments with limited access to technology. The Committee also advises on data privacy and confidentiality, among other issues.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on October 3. Individuals with extensive questions or statements must submit them in writing to: *census.national.advisory.committee@census.gov* (subject line "October 3, 2016 NAC Virtual Meeting Public Comment"), or by letter submission to the Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H179, 4600 Silver Hill Road, Washington, DC 20233.

Dated: September 13, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–22783 Filed 9–21–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–103–2016]

Approval of Subzone Status; Michaels Stores Procurement Company, Inc., Hazleton, Pennsylvania

On July 26, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting subzone status subject to the existing activation limit of FTZ 24, on behalf of Michaels Stores Procurement Company, Inc., in Hazleton, Pennsylvania.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 49927–49928, July 29, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 24D is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 24's 2,000-acre activation limit.

Dated: September 15, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–22880 Filed 9–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–847, A–791–822, A–489–828]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, South Africa, and the Republic of Turkey: Affirmative Preliminary Determinations of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that imports of Certain Carbon and Alloy Steel Cut-to-Length Plate (CTL plate) from Brazil, South Africa, and the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) for these investigations is April 1, 2015, through March 31, 2016. The estimated margins of sales at LTFV are shown in the "Preliminary Determinations" section of this notice. Interested parties are invited to comment on these preliminary determinations.

DATES: Effective September 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Kennedy at (202) 482–7883 (Brazil); Julia Hancock or Susan Pulongbarit at (202) 482–1394 or (202) 482–4031, respectively (South Africa); or Dmitry Vladimirov at (202) 482–0665 (Turkey), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of these investigations on May 5, 2016.[1] Companhia Siderurgica Nacional (CSN) and Usinas Siderurgicas de Minas Gerais SA (Usiminas) are the mandatory respondents in the investigation covering CTL plate from Brazil; Evraz Highveld Steel and Vanadium Corp. (Evraz Highveld) is the mandatory respondent in the investigation covering CTL plate from South Africa; and Ereğli Demir ve Çelik Fabrikalari T.A.Ş. (Erdemir) is the mandatory respondent in the investigation covering CTL plate from Turkey. For a complete description of the events that followed the initiation of these investigations, *see* the Preliminary Decision Memorandum dated concurrently with these determinations and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Department's Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical.

Scope of the Investigations

The products covered by these investigations are CTL plate. For a full description of the scope of these investigations, *see* the "Scope of the Investigations," in Appendix I of this notice.

Scope Comments

In accordance with the *Preamble* to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] Certain interested parties commented on the scope of these investigations as it appeared in the *Initiation Notice,* as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the records of these investigations, and a discussion and analysis of all comments timely received, *see* the Department's Preliminary Scope Decision

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[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 81 FR 27089 (May 5, 2016) (*Initiation Notice*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance "Decision Memorandum for the Preliminary Determinations in the Less-Than-Fair-Value Investigations of Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil, South Africa, and the Republic of Turkey," dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[4] *See Initiation Notice,* 81 FR at 27089.

Memorandum.[5] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to clarify the exclusion for stainless steel plate. The Department is also correcting two tariff numbers that were misidentified in the Petitions and in the *Initiation Notice*.[6]

Methodology

The Department is conducting these investigations in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). Pursuant to section 776(a) of the Act, the Department preliminarily relied upon facts otherwise available to assign an estimated weighted-average dumping margin to the mandatory respondents in these three investigations, because none of the respondents submitted a response to the Department's questionnaire.[7] Further, the Department is preliminarily determining that these mandatory respondents failed to cooperate by not acting to the best of their ability to comply with a request for information and applying adverse facts available (AFA) to these respondents, in accordance with section 776(b) of Act. For a full description of the methodology underlying our preliminary determinations, *see* Preliminary Decision Memorandum.

Critical Circumstances

On July 26, 2016, the petitioners[8] filed timely critical circumstances allegations, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from, among other countries, Brazil and Turkey.[9] The petitioners did not file a critical circumstances allegation with respect to South Africa.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. On September 7, 2016, we published our preliminarily determination that critical circumstances exist with respect to imports of CTL plate exported from Brazil and Turkey.[10]

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination the Department shall determine an estimated "all-others" rate for all exporters and producers not individually investigated, in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all-others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margins in these preliminary determinations were calculated entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis,* or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, the Department averages the margins calculated in the petition and applies the result to "all-other" entities not individually examined.

With respect to Brazil, in the Petitions,[11] the petitioners calculated only one margin. Therefore, for the all-others rate in the investigation covering CTL plate from Brazil, we preliminarily assigned the only margin calculated for subject merchandise from Brazil in the Petitions, as recalculated for the purposes of initiation, which is 74.52 percent.[12]

With respect to South Africa, in the Petitions,[13] the petitioners calculated two margins.[14] Consistent with our practice, we preliminarily assigned as the "all-others" rate in the investigation covering CTL plate from South Africa the simple average of the two dumping margins calculated for subject merchandise from South Africa provided in the Petitions, which is 87.72 percent.[15]

With respect to Turkey, in the Petitions,[16] the petitioners calculated two margins. Consistent with our practice, we preliminarily assigned as the "all-others" rate in the investigation covering CTL plate from Turkey the simple average of the two dumping margins calculated for subject merchandise from Turkey provided in the Petitions, which is 42.02 percent.[17]

Preliminary Determinations

The Department preliminarily determines that the following weighted-average dumping margins exist:

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[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2016 (Preliminary Scope Decision Memorandum).

[6] *Id.*

[7] *See* Letter from CSN, "Carbon and Alloy Steel Cut-To-Length Plate from Brazil," dated July 14, 2016; *See* Letter from Usiminas, "Carbon and Alloy Steel Cut-To-Length Plate from Brazil; Questionnaire Response," dated July 14, 2016; *see also* Letter from Erdemir, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Turkey: Erdemir notification of intent not to participate," dated June 24, 2016; *see also* Memorandum to File regarding, "Placing Federal Express Documents on the Record," dated concurrently with this notice.

[8] ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (collectively, the petitioners).

[9] *See* Letter from the petitioners, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Critical Circumstances Allegations," dated July 26, 2016.

[10] *See Antidumping Duty Investigations of Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the Republic of Korea, Taiwan, and Turkey: Preliminary Determinations of Critical Circumstances,* 81 FR 61666 (September 7, 2016).

[11] *See* Letter to the Secretary of Commerce from the petitioners, "Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitions for the Imposition of Antidumping and Countervailing Duties" (April 8, 2016) (the Petitions) at Volume III. *See also,* AD Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil (April 28, 2016) (in which the petition margin was recalculated for purposes of initiation).

[12] *See Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination,* 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014).

[13] *See* the Petitions at Volume X.

[14] *Id.*

[15] *Id.; see* also *Certain Polyethylene Terephthalate (PET) Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 13327 (March 14, 2016) (PET Resin from India Final Determination) and accompanying Issues and Decision Memorandum at Comment 14.

[16] *See* the Petitions at Volume XII.

[17] *Id.; PET Resin from India Final Determination* at Comment 14.

Exporter/producer	Weighted average margin (percent)
Brazil	
Companhia Siderurgica Nacional	74.52
Usinas Siderurgicas de Minas Gerais SA	74.52
All Others	74.52
South Africa	
Evraz Highveld Steel and Vanadium Corp	94.14
All Others	87.72
Turkey	
Ereğli Demir ve Çelik Fabrikalari T.A.Ş	50.00
All Others	42.02

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of CTL plate from Brazil, South Africa and Turkey, as described in the "Scope of the Investigations" in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. On September 7, 2016, we published our preliminarily determination that critical circumstances exist for imports from all producers and exporters of CTL plate from Brazil and Turkey. In accordance with 733(e)(2)(A), suspension of liquidation of CTL plate from Brazil and Turkey as described in the "Scope of the investigations" in Appendix I, shall apply to unliquidated entries of merchandise from all producers in Brazil and Turkey, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered. At such time, we will also instruct CBP, pursuant to section 733 (d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the margins indicated in the charts above.[18] These suspension of liquidation instructions will remain in effect until further notice.

Verification

Because the mandatory respondents in these investigations did not provide the information requested, the Department will not conduct verifications.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days after public announcement of the preliminary determination in accordance with 19 CFR 351.224(b). Because the Department preliminarily applied AFA to each of the mandatory respondents in these investigations, in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Interested parties are invited to comment on these preliminary determinations no later than 30 days after the date of publication of these preliminary determinations.[19] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[20] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these proceedings are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

In its Preliminary Scope Decision Memorandum, the Department established separate deadlines for interested parties to provide comments on scope issues.[21] Specifically, case briefs on scope issues may be submitted no later than 30 days after the publication of the preliminary countervailing duty determinations for CTL plate from China and Korea in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than five days after the deadline for the scope case briefs. Parties should limit any comments on scope issues to their scope case brief and rebuttal scope brief.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[22] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, we are notifying the U.S. International Trade Commission (ITC) of our affirmative preliminary determinations of sales at LTFV. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

These determinations are issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The products covered by these investigations are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling", (*e.g.,* products which have been beveled or rounded at the edges).

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[18] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

[19] *See* 19 CFR 351.309(c)(1)(i); *see* also 19 CFR 351.303 (for general filing requirements).

[20] *See* 19 CFR 351.309(d); *see* also 19 CFR 351.303 (for general filing requirements).

[21] *See* Preliminary Scope Decision Memorandum at page 15.

[22] *See* 19 CFR 351.310(c).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*e.g.,* orders on hot-rolled flat-rolled steel); and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of these investigations unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of these investigations:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115, except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to these investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to these investigations may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of these investigations is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigations
IV. Scope of the Investigations
V. Scope Comments
VI. Application of Facts Available and Use of Adverse Inference, and Calculation of All-Others Rate
VII. Critical Circumstances
VIII. Verification
IX. Conclusion

[FR Doc. 2016–22885 Filed 9–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952; A–583–844; C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China and Taiwan: Continuation of Antidumping Duty Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the "Department") and the International Trade Commission (the "ITC") that revocation of the antidumping duty ("AD") orders on narrow woven ribbons with woven selvedge ("NWRs") from the People's Republic of China ("PRC") and Taiwan and the countervailing duty ("CVD") order on NWRs from the PRC would likely lead to a continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, the Department is publishing this notice of continuation of the AD orders and the CVD order.

DATES: Effective September 22, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci (202–482–2923) or Toby Vandall (202–482–1664), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2015, the Department initiated [1] and the ITC instituted [2] five-year (sunset) reviews of the AD orders on NWRs from the PRC and Taiwan, and the CVD order on NWRs from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The Department conducted expedited sunset reviews of these orders. As a result of its reviews, the Department determined that revocation of the AD orders on NWRs from the PRC and Taiwan would likely lead to continuation or recurrence of dumping, and that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies.[3] The Department, therefore, notified the ITC of the magnitude of the dumping margins and net countervailable subsidy rates likely to prevail should the AD orders and the CVD order be revoked.[4] On September 15, 2016, the ITC published its determination, pursuant to sections 751(c) and 752 of the Act, that revocation of the AD orders on NWRs from the PRC and Taiwan, and the CVD order on NWRs from the PRC, would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by the scope of the orders is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the orders may:

- Also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or

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[1] *See Initiation of Five-Year ("Sunset") Review,* 80 FR 45945 (August 3, 2015).

[2] *See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan; Institution of Five-Year Reviews,* 80 FR 46048 (August 3, 2015).

[3] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 80 FR 76266 (December 8, 2015); *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order,* 80 FR 75967 (December 7, 2015).

[4] *Id.*

[5] *See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan,* 81 FR 63494 (September 15, 2016).

- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons with woven selvedge subject to the orders include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of the AD orders. Excluded from the scope of the orders are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull-bows" (*i.e.,* an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.,* filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the (HTSUS, Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.,* fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to the orders is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by the orders is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD and CVD orders would likely lead to continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD orders on NWRs from the PRC and Taiwan and the CVD order on NWRs from the PRC. United States Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year reviews of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation of the orders.

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–22888 Filed 9–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is rescinding the administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea, based on the timely withdrawal of requests for review. The period of review is May 1, 2015, through April 30, 2016.

DATES: *Effective:* September 22, 2016.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin at (202) 482–6478, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2016, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from the Republic of Korea (Korea) for the period of review (POR) of May 1, 2015, through

April 30, 2016 in the **Federal Register**.[1] On May 31, 2016, the Department received timely-filed requests from DAK Americas LLC and Auriga Polymers (the petitioners), and Huvis Corporation (Huvis), in accordance with 19 CFR 351.213(b), for an administrative review of Huvis.[2] On July 7, 2016, pursuant to these requests and in accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice of initiation of an administrative review of Huvis.[3] On July 12, 2016, and July 26, 2016, pursuant to 19 CFR 351.213(d)(1), the petitioners and Huvis, respectively, timely withdrew their requests for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Department will rescind an administrative review, in whole or in part, if the party, or parties, that requested a review withdraw the request/s within 90 days of the publication date of the notice of initiation of the requested review. As noted above, the petitioner withdrew its request for review of Huvis within 90 days of the publication date of the notice of initiation. In addition, Huvis also timely withdrew its request for an administrative review. No other parties requested an administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. Therefore, in response to the timely withdrawal of requests for review and in accordance with 19 CFR 351.213(d)(l), the Department is rescinding this review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PSF from Korea during the POR. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(l)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification To Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(l) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 16, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–22886 Filed 9–21–16; 8:45 am]

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 81 FR 26206 (May 2, 2016).

[2] *See* Letters from the petitioners, "Polyester Staple Fiber from Korea," and Huvis, "Certain Polyester Staple Fiber from Korea; Request for Administrative Review for 2015–2016 Period," both dated May 31, 2016. The petitioners also requested a review of Toray Chemical Korea, Inc. (Toray); because the petitioners withdrew this request before the initiation notice was published, and there were no other requests for a review of Toray, the Department did not initiate a review of Toray. *See* Letter from the petitioners, "Certain Polyester Staple Fiber from Korea; Withdrawal of Review Request for Toray Chemical Korea," dated June 27, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 44260 (July 7, 2016) (*Initiation Notice*).

[4] *See* Letter from the petitioners, "Polyester Staple Fiber From Korea—Withdrawal of Review Request," dated July 12, 2016, and letter from Huvis, "Certain Polyester Staple Fiber from Korea; Withdrawal of Review Request for 2015–2016 Period," dated July 26, 2016.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0092]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of the Secretary of Defense proposes to add a new system of records, DSCA 07, entitled "Security Assistance Network (SAN)." The SAN is the international security cooperation (SC) database and communications network that provides the Security Cooperation Offices (SCOs) and others in the SC community access to SC financial and logistics management systems, information via various bulletin boards, and a library system for large files. The SAN provides the primary interface for the input and output of data from all military departments, SCOs, and International Military Student Offices (IMSOs). Most importantly, the SAN is where the SCO training manager obtains data used for the Security Cooperation Training Management System (SC–TMS). All SCOs and IMSOs must use the SAN and its components to perform their assigned SC training management functions.

DATES: Comments will be accepted on or before October 24, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy

Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division Web site *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 2, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: September 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSCA 07

SYSTEM NAME:

Security Assistance Network (SAN)

SYSTEM LOCATION:

Institute for Defense Analysis (IDA), 4850 Mark Center Drive, Alexandria, VA 22311–1882.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian, military, contractor personnel (collectively, "U.S. personnel"), and individuals with dual citizenship with the U.S., selected to attend DoD security cooperation training (collectively, "students").

CATEGORIES OF RECORDS IN THE SYSTEM:

Security Cooperation Training Management System (SC–TMS): U.S. Personnel Data: Name, organization, office telephone and fax numbers, point of contact function, and military rank.

Student Data: Full name and alias, full face photograph, gender, citizenship, nationality, date and place of birth, physical descriptions, email addresses, work and home addresses, work and home telephone numbers, marital status, military rank and date of rank, branch of military service, worksheet and student control numbers, clearance, passport and visa information, health information, lodging and travel information, emergency contact(s), language capabilities, educational and employment information, academic evaluation, religious affiliation, personal preferences (*i.e.,* dietary needs, religious accommodations, customs and traditions), activity remarks, and dependency data (if accompanied).

SECURITY COOPERATION WORKFORCE DATABASE (SCWD):

U.S. Personnel Data: Name, DoD Identification Number (DoD ID Number), military rank, position number, source and title, funding source, billet category, headquarters, current service, organization, country, state, rotate date, minimal training, and level of training.

INTERNATIONAL AFFAIRS CERTIFICATION DATABASE (IACD):

U.S. Personnel Data: Full name, personal or work email address, mailing address, telephone and fax number, major command and work mailing address, name of organization, office symbol/code, job title, job function, grade/rank, job series, military specialty, start date, total months in International Affairs related work, billet information, current certification level, highest education completed, and field of study. Supervisor information that consists of the first and last name, work email address, organization, office symbol, work phone, and fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 134, Under Secretary of Defense for Policy; 22 U.S.C. 39, Arms Export Control Act, Chapters 32 and Chapter 39; DoD Directive (DoDD) 5105.65, Defense Security Cooperation Agency (DSCA); DoDD 5101.1, DoD Executive Agent; DoDD 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; Army Regulation 12–15, Secretary of the Navy Instruction 4950.4B/Air Force Instruction 16–105, Joint Security Cooperation Education and Training; and DSCA Manual 5105.38–M, Security Assistance Management Manual (SAMM), Chapter 10, International Training.

PURPOSE(S):

The SAN is a network used to exchange Security Cooperation personnel management, training, and budget information between overseas Security Cooperation Offices, Geographical Combatant Commands, Military Departments, Defense Security Cooperation Agency (DSCA), Defense Finance and Accounting Services (DFAS), DoD Schoolhouses, Regional Centers, and international host nation organizations.

The SAN hosts the Security Cooperation Training Management System (SC–TMS) which are tools used by the Security Cooperation community to manage student training data, including the Security Cooperation Workforce Database (SCWD) and International Affairs Certification Database (IACD) which tracks and provides the status of training for the Security Cooperation workforce certification levels.

In addition, the SAN hosts the Security Assistance Automated Resource Management Suite and the Security Cooperation International Resource Management System, both of which are budget programs that do not collect personally identifiable information (PII).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows to:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures Required by International Agreements Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Individual's name, DoD Identification Number, Worksheet Control Number, or Student Control Number.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by centralized access control to include the use of CAC, passwords, file permissions, and audit logs.

RETENTION AND DISPOSAL:

Destroy five years after completion of a specific training program, after period covered by account, from last activity or when superseded or obsolete, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

SAN System Administrator, Defense Institute of Security Management, 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Institute of Security Management, ATTN: Director of International Studies or Director of Research, 2475 K Street, Wright-Patterson AFB, OH 45433–7641.

Signed, written requests should include the full name, DoD ID Number (if applicable), current address and telephone number, and the name and number of this system of records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name, DoD ID number (if applicable), current address and telephone number, and the name and number of this system of records notice.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual or service organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2016–22807 Filed 9–21–16; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce an open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). This meeting will be open to the public.

DATES: Wednesday, October 19, 2016, from 8:30 a.m. to 3:50 p.m.

ADDRESSES: 901 N. Stuart Street, Suite 200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Herb Nelson, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350–3605; or by telephone at (571) 372–6565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the October 19, 2016 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

BILLING CODE 5001–06–P

Agenda for October 19, 2016

8:30 a.m.	Convene/Opening Remarks	**Dr. Joseph Hughes** Chair
8:40 a.m.	Resource Conservation & Climate Change Overview	**Dr. Herb Nelson** Resource Conservation & Climate Change Program Manager
8:50 a.m.	**17 RC01-005 (RC-2700):** Will Climate-mediated Phenological Shifts Affect Population Viability? A Test with Butterflies on Department of Defense Lands (FY17 New Start)	**Dr. Elizabeth Crone** Tufts University Medford, MA
9:35 a.m.	**17 RC01-044 (RC-2702):** Variation in Phenological Shifts: How do Annual Cycles and Genetic Diversity Constrain or Enable Responses to Climate Change? (FY17 New Start)	**Dr. Julie Heath** Boise State University Boise, ID
10:20 a.m.	Break	
10:35 a.m.	Weapons Systems and Platforms Overview	**Dr. Robin Nissan** Weapons Systems and Platforms Program Manager
10:45 a.m.	**17 WP03-018 (WP-2742):** Atmospheric Plasma for Surface Modifications and Nanoscale Embedding of Chemistry for Corrosion Control and Adhesion Promotion (FY17 New Start)	**Dr. Santanu Chaudhuri** Board of Trustees of the University of Illinois Champaign, IL
11:30 a.m.	**17 WP03-024 (WP-2743):** Laser-Interference Surface Preparation for Enhanced Coating Adhesion and Adhesive Joining of Multi-Materials (FY17 New Start)	**Dr. Adrian Sabau** Oak Ridge National Laboratory Oak Ridge, TN
12:15 p.m.	Lunch	
1:15 p.m.	Environmental Restoration Overview	**Dr. Andrea Leeson** Environmental Restoration Program Manager
1:25 p.m.	**17 ER03-017 (ER-2725):** Incorporating Transformation Products into Models of the Environmetal Fate of Insensitive Munition Constituents (FY17 New Starts)	**Dr. Paul Tratnyek** Oregon Health & Science University Portland, OR
2:10 p.m.	**17 ER03-013 (ER-2724):** Determination of Fate and Toxicological Effects of Insensitive Munitions Compounds in Terrestrial Ecosystems (FY17 New Start)	**Dr. Roman Kuperman** U.S. Army Edgewood Chimical Biological Center Aberdeen Proving Ground, MD
2:55 p.m.	Break	
3:10 p.m.	Strategy Session	
3:50 p.m.	Adjourn	

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at *http://www.facadatabase.gov/.*

Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: September 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22804 Filed 9–21–16; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0049]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Activities Cyber Incident Reporting; OMB Control Number 0704–0489.

Type of Request: Extension.

Number of Respondents: 8,500.

Responses per Respondent: 5.

Annual Responses: 42,500.

Average Burden per Response: 2 hours.

Annual Burden Hours: 85,000.

Needs and Uses: This information collection supports voluntary cyber incident reporting from DoD contractors to DoD in accordance with 32 Code of Federal Regulations (CFR) part 236, "Department of Defense (DoD)—Defense Industrial Base (DIB) Cybersecurity (CS) Activities," which authorizes the DIB CS program.

Affected Public: Business or other for-profit and not for profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22872 Filed 9–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce an open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). This meeting will be open to the public.

DATES: Tuesday, October 18, 2016, from 8:30 a.m. to 4:35 p.m.

ADDRESSES: 901 N. Stuart Street Suite 200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Herb Nelson, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350–3605; or by telephone at (571) 372–6565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the October 18, 2016 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

BILLING CODE 5001–06–P

Agenda for October 18, 2016

8:30 a.m.	Convene/Opening Remarks Approval of September 2016 Minutes	**Dr. Joseph Hughes** Chair
8:40 a.m.	**Program Update**	**Dr. Herb Nelson** **Acting Executive Director**
8:55 a.m.	**Environmental Restoration Overview**	**Dr. Andrea Leeson** **Environmental Restoration Program Manager**
9:05 a.m.	**17 ER01-019 (ER-2715): In situ Remediation of Aqueous Film Forming Foams and Common Co-Contaminants with the Dual Approach of Chemical Oxidation and Bioremediation (FY17 New Start)**	**Dr. Lisa Alvarez-Cohen** **The Regents of the University of California** **Berkeley, CA**
9:50 a.m.	**17 ER01-008 (ER-2714): Development of Coupled Physicochemical and Biological Systems for In Situ Remediation of Perfluorinated Chemical and Chlorinated Solvent Groundwater Plumes (FY17 New Start)**	**Dr. Kurt Pennell** **Tufts University** **Medford, MA**
10:35 a.m.	Break	
10:45 a.m.	**17 ER01-020 (ER-2716): Development of Slow Release Compounds for the Aerobic Cometabolic Treatment of Complex Mixtures of COC Released from Low Permeability Zones (FY17 New Start)**	**Dr. Lewis Semprini** **Oregon State University** **Corvallis, OR**
11:30 a.m.	**17 ER01-027 (ER-2718): Synergistic Treatment of Mixed 1,4-Dioxane and Polyfluorinated Chemical Contaminations by Combining Electrolytic Degradation with Electrobiostimulation (FY17 New Start)**	**Dr. Jens Blotevogel** **Colorado State University** **Fort Collins, CO**
12:15 p.m.	Lunch	
1:15 p.m.	**17 ER01-031 (ER-2719): Utilizing the Plant Microbiome and Bioaugmentation to Degrade 1,4-Dioxane and Co-Contaminants (FY17 New Start)**	**Dr. Jerald Schnoor** **University of Iowa** **Iowa City, IA**
2:00 p.m.	**17 ER01-036 (ER-2720): Key Fate and Transport Processes Impacting the Mass Discharge, Attenuation, and Treatment of Poly- and Perfluoroalkyl Substances and Comingled Chlorinated Solvents or Aromatic Hydrocarbons (FY17 New Start)**	**Dr. Christopher Higgins** **Colorado School of Mines** **Golden, CO**
2:45 p.m.	Break	
2:55 p.m.	**Munitions Response Overview**	**Dr. Herb Nelson** **Munitions Response Program Manager**
3:05 p.m.	**17 MR01-015 (MR-2730): Unexploded Ordnance Characterization And Detection in Muddy Estuarine Environments (FY17 New Start)**	**Dr. Arthur Trembanis** **University of Delaware** **Newark, DE**
3:50 p.m.	**17 MR01-030 (MR-2734): Augmented Co-Robotics for Remediation of Military Munitions Underwater (FY17 New Start)**	**Dr. Andrew Stewart** **University of Washington Applied Physics Laboratory** **Seattle, WA**
4:35 p.m.	Public Discussion / Adjourn for the day	

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at *http://www.facadatabase.gov/*. Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: September 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–22803 Filed 9–21–16; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee; Meeting Notice

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, October 19, 2016; 8:45 a.m. to 9:30 a.m. (EDT)—Registration; 9:30 a.m. to 4:45 p.m. (EDT)—Meeting.

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 3F–071, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Lou Capitanio, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Avenue SW., Washington, DC 20585. *Phone:* (202) 586–5098.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Methane Hydrate Research and Development Program.

Tentative Agenda: The agenda will include: Welcome and Introduction by the Designated Federal Officer; Committee Business including election of Committee Chair; Review of Secretary's Energy Advisory Board Report on the Methane Hydrate Program; Update on Review of Methane Hydrate Program Activities and Plans; Methane Hydrate Program Budget; Methane Hydrate Program Strategic Direction; Major Project Review; International Activity; Advisory Committee Discussion; and Public Comments, if any.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Lou Capitanio at the phone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: *http://energy.gov/fe/services/advisory-committees/methane-hydrate-advisory-committee.*

Issued at Washington, DC, on September 16, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–22869 Filed 9–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, October 28, 2016; 8:30 a.m.–4:00 p.m.

ADDRESSES: Hilton Washington DC/North Gaithersburg, 620 Perry Parkway, Gaithersburg, Maryland 20877, (301) 977–8900.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: (301) 903–0536 or email: *brenda.may@science.doe.gov.*

The most current information concerning this meeting can be found on the Web site: *http://science.gov/np/nsac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Friday, October 28, 2016

- Update from the Department of Energy and National Science Foundation's Nuclear Physics Office's
- Presentation of the Committee of Visitor's Report
- Discussion on the Committee of Visitor's Report
- Presentation of New Charge on Molybdenum-99
- Presentation of the NP SBIR/STTR Program

Note: The NSAC Meeting will be broadcast live on the Internet. You may find out how to access this broadcast by going to the following site prior to the start of the meeting. A video record of the meeting including the presentations that are made will be archived at this site after the meeting ends: *http://www.tvworldwide.com/events/DOE/161028.*

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, (301) 903–0536 or *Brenda.May@science.doe.gov* (email). You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

The minutes of the meeting will be available for review on the U.S. Department of Energy's Office of Nuclear Physics' Web site at: *http://science.gov/np/nsac/meetings/.*

Issued in Washington, DC, on September 16, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–22871 Filed 9–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 12, 2016; 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management, P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; Email: *Melyssa.Noe@orem.doe.gov.* Or visit the Web site at *www.energy.gov/orssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Discussion: State of Oak Ridge Environmental Management Program
- Additions/Approval of Agenda
- Motions/Approval of September 14, 2016 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Alternate DDFO Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *www.energy.gov/orssab.*

Issued at Washington, DC, on September 16, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–22870 Filed 9–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–183–000.

Applicants: Noble Altona Windpark, LLC, Noble Bliss Windpark, LLC, Noble Clinton Windpark I, LLC, Noble Ellenburg Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Great Plains Windpark, LLC, Noble Wethersfield Windpark, LLC.

Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, and Expedited Consideration of Noble Altona Windpark, LLC, et al.

Filed Date: 9/16/16.

Accession Number: 20160916–5121.

Comments Due: 5 p.m. ET 10/7/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–151–000.

Applicants: Dermott Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Dermott Wind, LLC.

Filed Date: 9/16/16.

Accession Number: 20160916–5062.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: EG16–152–000.

Applicants: Innovative Solar 46, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Solar 46, LLC.

Filed Date: 9/16/16.

Accession Number: 20160916–5115.

Comments Due: 5 p.m. ET 10/7/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–012; ER10–1819–014; ER10–1820–017; ER10–1817–013.

Applicants: Public Service Company of Colorado, Southwestern Public Service Company, Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: Supplement to August 24, 2016 Supplement to Triennial Market Power Analysis and Notice of Change in Status of Public Service Company of Colorado, et al.

Filed Date: 9/13/16.

Accession Number: 20160913–5459.

Comments Due: 5 p.m. ET 10/4/16.

Docket Numbers: ER16–2091–000.

Applicants: Idaho Power Company.

Description: Supplement to June 30, 2016 Market Based Rate Triennial Analysis of Idaho Power Company.

Filed Date: 9/15/16.

Accession Number: 20160915–5236.

Comments Due: 5 p.m. ET 10/6/16.

Docket Numbers: ER16–2595–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3240 WAPA & City of Flandreau, SD Interconnection Agreement to be effective 8/31/2016.

Filed Date: 9/16/16.

Accession Number: 20160916–5029.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: ER16–2596–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2233R2 Osage Wind/GRDA Facilities Construction Agreement to be effective 8/25/2016.

Filed Date: 9/16/16.

Accession Number: 20160916–5030.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: ER16–2597–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2016–9–16_OATT Att-O–PSCo_Admin SAP Filing to be effective 1/1/2016.

Filed Date: 9/16/16.

Accession Number: 20160916–5048.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: ER16–2598–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: OATT–Att O–PSCo_O–SPS Administrative SAP Filing to be effective 4/16/2016.

Filed Date: 9/16/16.

Accession Number: 20160916–5052.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: ER16–2599–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 272 to be effective 11/16/2016.

Filed Date: 9/16/16.

Accession Number: 20160916–5105.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: ER16–2600–000.

Applicants: San Diego Gas & Electric Company.

Description: Notice of Cancellation of Large Generator Interconnection

Agreement of San Diego Gas & Electric Company.

Filed Date: 9/16/16.

Accession Number: 20160916–5125.

Comments Due: 5 p.m. ET 10/7/16.

Docket Numbers: ER16–2601–000.

Applicants: Summit Farms Solar, LLC.

Description: Baseline eTariff Filing: Baseline—Market-Based Rate Tariff to be effective 11/1/2016.

Filed Date: 9/16/16.

Accession Number: 20160916–5131.

Comments Due: 5 p.m. ET 10/7/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH16–13–000.

Applicants: Corning Natural Gas Holding Corporation.

Description: Corning Natural Gas Holding Corporation submits FERC 65–A Exemption Notification.

Filed Date: 9/15/16.

Accession Number: 20160915–5233.

Comments Due: 5 p.m. ET 10/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22852 Filed 9–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1237–000.

Applicants: Golden Triangle Storage, Inc.

Description: § 4(d) Rate Filing: Revisions to GTS Contact Information in FERC Gas Tariff to be effective 9/20/2016.

Filed Date: 9/14/16.

Accession Number: 20160914–5055.

Comments Due: 5 p.m. ET 9/26/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15–673–002.

Applicants: Equitrans, L.P.

Description: Compliance filing FLPS First Year of Service—Compliance Filing.

Filed Date: 9/15/16.

Accession Number: 20160915–5085.

Comments Due: 5 p.m. ET 9/27/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 15, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22853 Filed 9–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–26–000]

Aircraft Service International Group, Inc., American Airlines, Inc., Delta Air Lines, Inc., Hookers Point Fuel Facilities LLC, Southwest Airlines Co., United Aviation Fuels Corporation, United Parcel Service, Inc. v. Central Florida Pipeline LLC, Kinder Morgan Liquid Terminals LLC; Notice of Complaint

Take notice that on September 16, 2016, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, section 343.2 of the Commission's Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2 (2016), and sections 1, 6, 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. app. §§ 1, 6, 8, 9, 13, 15, & 16 (1988), Aircraft Service International Group, Inc., American Airlines, Inc., Delta Air Lines, Inc., Hookers Point Fuel Facilities LLC, Southwest Airlines Co., United Aviation Fuels Corporation, and United Parcel Service, Inc. (Complainants) filed a formal complaint against Central Florida Pipeline LLC (CFPL) and Kinder Morgan Liquid Terminals LLC (KMLT) (Respondents) alleging that CFPL has unlawfully provided for physical transportation of jet fuel in interstate commerce on its pipeline without filing a tariff with the Commission in violation of ICA § 6(1) and KMLT has unlawfully provided untariffed FERC jurisdictional break out tankage service at its liquids terminal in Tampa, Florida (KMLT Tampa Terminal) in violation of ICA § 6(1). Complainants further allege that the rates charged by CFPL for the transportation of jet fuel from Tampa, Florida to the Orlando Terminal and the ASIG Terminal at Orlando International Airport in Orlando, Florida are not just and reasonable, as more fully explained in the complaint.

Complainants certify that copies of the complaint were served upon (1) the corporate representative identified in CFPL's March 1, 2016 letter to shippers establishing the currently effective tariff rates on CFPL, Meredith West, as CFPL has not designated a person on the Commission's Corporate Officials List as representing CFPL in this action, and (2) Mark Evans and Jeff Hulbert, representatives identified on Kinder Morgan's Web site as responsible for Central Florida Pipeline and Southeast Terminals and Products Pipelines Tariffs, respectively.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 17, 2016.

Dated: September 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–22854 Filed 9–21–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0341; FRL–9951–84–OAR]

Notice of Availability of Three Updated Chapters in the Environmental Protection Agency's Air Pollution Control Cost Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that three chapters of the current EPA Air Pollution Control Cost Manual (Control Cost Manual) have been updated. The EPA is requesting comment on Section 1, Chapter 2, "Cost Estimation: Concepts and Methodology"; Section 3.1, Chapter 1, "Refrigerated Condensers"; and Section 3.2, Chapter 2, "Incinerators/Oxidizers."

DATES: Comments must be received on or before December 21, 2016. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on submitting comments on the provided data.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0341, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Larry Sorrels, Health and Environmental Impacts Division, C439–02, Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541–5041; fax number: (919) 541–0839; email address: *sorrels.larry@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA is requesting comment on the specific Control Cost Manual chapters included in this NODA.

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA docket office, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. *Tips for Preparing your Comments.* When submitting comments, remember to:

- Identify the notification by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language/data for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Available for Public Comment

The EPA is requesting comment on three updated chapters of the EPA Air Pollution Control Cost Manual. The Control Cost Manual contains individual chapters on control measures, including data and equations to aid users in estimating capital costs for installation and annual costs for operation and maintenance of these measures. The Control Cost Manual is used by the EPA for estimating the impacts of rulemakings, and serves as a basis for sources to estimate costs of controls that are Best Available Control Technology under the New Source Review Program, and Best Available Retrofit Technology under the Regional Haze Program and for other programs.

The three updated Control Cost Manual chapters are: Section 1, Chapter 2, Cost Estimation: Concepts and Methodology; Section 3.1, Chapter 1, Refrigerated Condensers; and Section 3.2, Chapter 2, Incinerators/Oxidizers. Section 3.2, Chapter 2, "Incinerators" will now include oxidizers, for this type of control device is commonly used for destruction of volatile organic compounds (VOC) emissions, which is the primary function of incinerators. These three revised Control Cost Manual chapters can be found in the docket for the Control Cost Manual update (Docket ID No. EPA–HQ–OAR–2015–0341). The current Control Cost Manual version (sixth edition) is available at *https://www3.epa.gov/ttn/ecas/cost_manual.html,* and was last updated in 2003. The Consolidated Appropriations Act of 2014 requested that the EPA begin development of a seventh edition of the Control Cost Manual. The EPA has met with state, local, and tribal officials to discuss plans for the Control Cost Manual update as called for under the Consolidated Appropriations Act of 2014. The EPA has met with other groups as well at their request. The EPA recently updated the selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR) chapters (Section 4, Chapters 1 and 2) which were made available to the public in May 2016 (81 FR 38702, June 14, 2016).

To help focus review of the three chapters, Cost Estimation: Concepts and Methodology (Section 1, Chapter 2,); Refrigerated Condensers (Section 3.1, Chapter 1); and Incinerators/Oxidizers (Section 3.2, Chapter 2), we offer the following list of questions that the EPA is particularly interested in addressing in the updated chapters. Commenters are welcome to address any aspects of these chapters. Please provide supporting data for responses to these questions and other aspects of the chapters.

For the Cost Estimation: Concepts and Methodology chapter:

(1) Is the cost methodology included in this chapter consistent with best practices for cost estimation of pollution control equipment installation, operation and maintenance?

(2) Is the use of the equivalent uniform annual cost method appropriate for estimating costs for pollution control devices, particularly end-of-pipe controls?

(3) Are the cost items included in the definition of capital cost or total capital investment valid? Are the cost items included in the definition of annual costs valid?

For the Refrigerated Condensers chapter:

(1) What is a reasonable estimate of equipment life (defined as design or operational life) for this control measure?

(2) Is the description of refrigerated condensers complete, up to date, and accurate, particularly with regard to control of VOC?

(3) Are the cost correlations, factors, and equations for refrigerated condensers accurate? If not, how should they be revised?

(4) Are the estimates of VOC destruction efficiency for refrigerated condensers accurate?

(5) Is the discussion on the effect of fouling on refrigerated condensers accurate?

For the Incinerators/Oxidizers chapter:

(1) What is a reasonable estimate of equipment life (defined as design or operational life) for this control measure?

(2) Is the description of incinerator technologies complete, up to date, and accurate? For oxidizers?

(3) Are the cost correlations, factors, and equations for incinerators and oxidizers accurate? If not, how should they be revised?

(4) Are the estimates of incinerators VOC destruction efficiency accurate? For oxidizers?

Dated: September 8, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–22846 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0146; FRL–9952–68–OAR]

Release of Draft Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is reviewing the primary National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide (NO_2). On or about September 23, 2016, the EPA will make available for public review the document titled *Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide—External Review Draft* (draft PA). This draft PA is intended to facilitate the Clean Air Scientific Advisory Committee's (CASAC's) advice and public input as part of the ongoing review of the primary NAAQS for NO_2.

DATES: Comments should be received on or before December 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0146, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

The draft PA will be available primarily via the Internet at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_index.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Jennifer Nichols, Office of Air Quality Planning and Standards, Mail Code C504–06, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0708; fax number: 919–541–5315; email: *nichols.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. *Tips for Preparing your Comments.* When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternative and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information About the Document

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her "judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;" "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;" and "for which * * * [the Administrator] plans to issue air quality criteria * * *." Air quality criteria are intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * * " (42 U.S.C. 7408(b)). Under section 109 (42 U.S.C. 7409), the EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria. Section 109(d)(2) requires that an independent scientific review committee "shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of the existing criteria and standards as may be appropriate * * *." Since the early 1980s, this independent review function has been performed by the CASAC.

Presently, the EPA is reviewing the primary NAAQS for NO_2. The first draft *Integrated Science Assessment for Oxides of Nitrogen (Health Criteria)* (ISA) was released on November 22, 2013 (78 FR 70040), and the draft *Integrated Review Plan for the Primary NAAQS for Nitrogen Dioxide* (IRP) was released on February 6, 2014 (79 FR 7184). Both documents were reviewed by the CASAC at a public meeting in March 2014, announced in a separate notice (79 FR 8701, February 13, 2014). The final IRP was released in June 2014 (79 FR 36801, June 30, 2014) and is available at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_2012_pd.html.* The second draft ISA was made available to both the CASAC and the public (80 FR 5110, January 30, 2015), and was reviewed in addition to the *Risk and Exposure Assessment Planning Document* (REA Planning Document) (80 FR 27304, May 13, 2015) at a public meeting in June 2015 (80 FR 22993, April 24, 2015). The final ISA was then released in January 2016 (81 FR 4910, January 28, 2016) after taking into consideration the CASAC's advice and public comments.

The PA, when final, will serve to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether to retain or revise the existing primary NAAQS for NO_2, and, if revision is considered, what revisions may be appropriate. The draft PA announced today builds upon information presented in the final ISA and the REA Planning Document. The draft PA will be available on or about September 16, 2016, through the agency's Technology Transfer Network (TTN) Web site at *https://www3.epa.gov/ttn/naaqs/standards/nox/s_nox_index.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review of this draft document at an upcoming public meeting of the CASAC, scheduled for November 9–10, 2016. Information about this public meeting will be published as a separate notice in the **Federal Register**. Following the CASAC meeting, the EPA will consider comments received from the CASAC and the public in preparing revisions to this document. The EPA will also consider public comments submitted in response to this notice when revising the document. Comments should be submitted to the docket, as described above. The document that is the subject of today's notice does not represent and should not be construed to represent any final EPA policy, viewpoint or determination.

Dated: September 15, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–22681 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0317; FRL–9952–53]

Registration Review; Draft Malathion Human Health Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health risk assessment for the registration review of malathion (case 0248) for public review and comment. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed a comprehensive draft human health risk assessment for malathion. After reviewing comments received during the public comment period, EPA may issue a revised human health risk assessment, explain any changes to the draft risk assessment, respond to comments, and may request public input on risk mitigation before completing its proposed registration

review decision for malathion. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 21, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0317, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact the Chemical Review Manager: Steven Snyderman at telephone number: (703) 347–0249; email address: *snyderman.steven@epa.gov.*

For general questions on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of malathion pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Review

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for malathion to ensure that they continue to satisfy the FIFRA standard for registration—that is, that malathion can still be used without unreasonable adverse effects on human health or the environment. Information concerning the registration review of malathion (case 0248) is in the docket, under Docket ID No. EPA–HQ–OPP–2009–0317.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health risk assessment for malathion. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to this draft human health risk assessment. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft human health risk assessment. EPA will then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessment, if the revised risk assessment indicates risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing a proposed registration review decision for malathion.

1. *Other related information.* Additional information on the registration review status of malathion, as well as information on the Agency's registration review program and on its implementing regulation is available at *https://www.epa.gov/pesticide-reevaluation.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 14, 2016.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–22881 Filed 9–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0653]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0653.

Title: Sections 64.703(b) and (c), Consumer Information—Posting by Aggregators.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,075 respondents; 5,339,038 responses.

Estimated Time per Response: .017 hours (1 minute) to 3 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 226 [47 U.S.C. 226] Telephone Operator Services codified at 47 CFR 64.703(b) Consumer Information.

Total Annual Burden: 174,401 hours.

Total Annual Cost: $1,343,721.

Privacy Act Impact Assessment: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Nature and Extent of Confidentiality: No impact(s).

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0653, requires aggregators (providers of telephones to the public or to transient users of their premises) under 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) of the Commission's rules, to post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints.

Section 64.703(c) of the Commission's rules requires the posted consumer information to be added when an aggregator has changed the pre-subscribed operator service provider (OSP) no later than 30 days following such change. Consumers will use this information to determine whether they wish to use the services of the identified OSP.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–22797 Filed 9–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0655]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0655.

Title: Requests for Waivers of Regulatory Fees and Application Fees.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 340 respondents, 340 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 158 and 47 U.S.C. 159.

Total Annual Burden: 340 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Parties filing information may request that the information be withheld from disclosure. Requests for confidentiality are processed in accordance with FCC rules under 47 CFR 0.459. This information collection does not affect individuals; however, should any personally identifiable information (PII) be submitted, "the FCC has a system of records notice, FCC/OMD–6, "Financial Accounting Systems (FAS)" and FCC/OMD–9, "Commission Registration Systems (CORES)" to cover the collection, use, storage, and destruction of this PII, as required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a."

Needs and Uses: Pursuant to 47 U.S.C. 158 and 47 U.S.C. 159, the FCC is required to collect application fees and annual regulatory fees from its licensees and permittees. Licensees and permittees may request waivers of these fees where good cause is shown and where waiver or deferral of the fee would promote the public interest. Financial information and reports that are submitted to support waiver requests are ordinarily maintained as business records and can be easily assembled. The FCC uses the information submitted in support of the waiver request to determine if such waiver is warranted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–22875 Filed 9–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0960]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0960.

Title: 47 CFR 76.122, Satellite Network Non-duplication Protection Rules; 47 CFR 76.123, Satellite Syndicated Program Exclusivity Rules and 47 CFR 76.124, Requirements for Invocation of Non-duplication and Syndicated Exclusivity Protection.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,428 respondents and 9,636 responses.

Estimated Time per Response: 0.5–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 9,272 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 4(j), 303(r), 339 and 340 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.122, 76.123 and 76.124 are used to protect exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the transmission of network syndicated in the broadcasters' recognized market areas. Rule sections 76.122 and 76.123 implement statutory requirements to provide rights for in-market stations to assert non-duplication and exclusivity rights.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of Secretary.

[FR Doc. 2016–22874 Filed 9–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1215]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 21, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1215.

Title: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services.

Form Number: N/A.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 247 respondents; 247 responses.

Estimated Time per Response: .5–10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement; upon commencement of service, or within 3 years of effective date of rules; and at end of license term, or 2024 for incumbent licensees.

Obligation to Respond: Statutory authority for this collection are contained in sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

Total Annual Burden: 363 hours.

Total Annual Cost: $196,875.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: In this collection, the Commission adopted new licensing, service, and technical rules for bands 27.5–28.35 GHz band (28 GHz band), the 38.6–40 GHz band (39 GHz band), and the 37–38.6 GHz band (37 GHz band), to include 64–71 GHz band under Part 15. In so doing, the Commission created a consistent framework across all of the bands that can serve as a template for additional bands in the future.

The rules adopted by the Commission, in FCC 16–89, contain the following information collections:

Section 25.136—This rule contains both a third party coordination requirement and a filing requirement. Both requirements are necessary to ensure that Fixed Satellite Service earth stations can receive interference protection without having an undue impact on terrestrial deployment.

Section 30.3—This rule contains a filing requirement which is necessary to ascertain compliance with the foreign ownership restrictions contained in the Communications Act and the Commission's rules.

Section 30.8—This rule contains a requirement that each licensee file a statement describing its network security plans and related information, which shall be signed by a senior executive within the licensee's organization with personal knowledge of the security plans and practices within the licensee's organization. This statement is necessary to ensure that licensees properly take security into consideration when designing their systems.

Section 30.105—This rule contains filing requirements relating to demonstration of compliance with the Commission's buildout requirements. These filings are necessary in order to ensure that licensees are placing the spectrum in use and not warehousing spectrum.

Section 30.107—This rule contains filing requirements that apply when licensees propose to discontinue service. These filings are necessary in order to ensure that licensees are placing the spectrum in use and not warehousing spectrum.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–22873 Filed 9–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *F.N.B. Corporation,* Pittsburgh, Pennsylvania; to acquire Yadkin Financial Corporation, Raleigh, North Carolina, and thereby acquire Yadkin Bank, Statesville, North Carolina,

Board of Governors of the Federal Reserve System, September 19, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–22847 Filed 9–21–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0997]

Agency Forms Undergoing Paperwork Reduction Acct Review

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period; withdrawal.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the withdrawal of the notice published under the same title on August 25, 2016 for public comment.

DATES: Effective September 22, 2016.

FOR FURTHER INFORMATION CONTACT: Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: On August 25, 2016 CDC published a notice in the **Federal Register** titled "Agency Forms Undergoing Paperwork Reduction Act Review" (Vol. 81, No. 165 FR Doc. 2016–20333, Pages 58511–58512). This notice was published prematurely and inadvertently. The notice is being withdrawn immediately for public comment. A new notice will be published at a later date for public comment.

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–22866 Filed 9–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Technical Electronic Product Radiation Safety Standards Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Technical Electronic Product Radiation Safety Standards Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on October 25, 2016, from 8:30 a.m. to 5 p.m. and October 26, 2016, from 8:30 a.m. to 5 p.m.

ADDRESSES: Gaithersburg Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's telephone number is 301–948–8900. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Sara J. Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1643, Silver Spring, MD 20993–0002, *sara.anderson@fda.hhs.gov,* 301–796–7047, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The general function of the committee is to provide advice and recommendations to the Agency on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards to the Agency for consideration.

On October 25, 2016, the committee will discuss and make recommendations regarding possible FDA performance standards for the following topics: Radiofrequency (RF) radiation products, such as microwave ovens and wireless power transfer; laser products, including an update to amendments to the laser rule, light detection and ranging (LIDAR), laser data (Light Fidelity-LiFi)/energy transfer, illumination applications and infrared applications; sunlamp products including an update on the performance standards amendments; and non-coherent light sources (*e.g.,* LEDs and UVC lamps) including new initiatives.

On October 26, 2016, the committee will discuss and make recommendations regarding possible FDA performance standards for the following topics: International Electrotechnical Commission (IEC) standards versus performance standards for medical devices; computed tomography (CT); radiography and fluoroscopy; diagnostic and therapeutic ultrasound; and radiation therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 14, 2016. Oral presentations from the public will be scheduled between approximately 10 a.m. to 10:30 a.m. and 3 p.m. to 3:30 p.m. on October 25, 2016, and between approximately 10:15 a.m. to 10:45 a.m. and 2:30 p.m. to 3 p.m. on October 26, 2016. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 6, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 7, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 16, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–22808 Filed 9–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0155]

Veterinary Feed Directive Common Format Questions and Answers; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry #233 entitled "Veterinary Feed Directive Common Format Questions and Answers." FDA had received comments requesting that we require a uniform Veterinary Feed Directive (VFD) form. We declined this request because we think that requiring a specific VFD form would be too prescriptive. However, we acknowledge that a common VFD format would help veterinarians, their clients (*i.e.,* animal producers), and distributors (including feed mills) quickly identify relevant information on the VFD. We are issuing this guidance to recommend a common VFD format. We expect this guidance will reduce potential errors on VFDs.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2010–N–0155 for "Veterinary Feed Directive Common Format Questions and Answers." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dragan Momcilovic, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5944, email: *dragan.momcilovic@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Following publication of the proposed rule to update FDA's veterinary feed directive (VFD) regulation in December 2013 (78 FR 75515), in the **Federal Register** of December 1, 2015 (80 FR 75119), FDA published the notice of availability for a draft guidance entitled "Veterinary Feed Directive Common Format Questions and Answers" giving interested persons until February 1, 2016, to comment on the draft guidance. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated December 2015.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Veterinary Feed Directive Common Format Questions and Answers. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 514.1 have been approved under OMB Control No. 0910–0032. The collections of information in 21 CFR 558.6 have been approved under OMB Control No. 0910–0363.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: September 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22775 Filed 9–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Renewal of Charter for the Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is giving notice that the Advisory Committee on Organ Transplantation (ACOT) has been rechartered. The effective date of the renewed charter is September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, Executive Secretary, Advisory Committee on Organ Transplantation, HRSA, Room 08W60, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443–6839; fax: (301) 594–6095; email: *rwalsh@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, 42 CFR 121.12 (2000), and in accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, ACOT was initially chartered on September 1, 2000, and was renewed at appropriate intervals. ACOT provides advice to the Secretary of HHS (the Secretary) on all aspects of organ donation, procurement, allocation, and transplantation, and on such other matters that the Secretary determines. The recommendations of ACOT facilitate Department efforts to oversee the Organ Procurement and Transplantation Network, as set forth in the National Organ Transplant Act of 1984, as amended.

On August 31, 2016, the Secretary approved the ACOT charter to be renewed. The filing date of the renewed charter was September 1, 2016. Renewal of the ACOT charter gives authorization for the Committee to operate until September 1, 2018.

A copy of the ACOT charter is available on the ACOT Web site at *http://www.organdonor.gov/legislation/advisory.html.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://www.facadatabase.gov/.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–22858 Filed 9–21–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Announcement for the Technical Advisory Panel on Medicare Trustee Reports

ACTION: Notice of public meeting.

SUMMARY: This notice announces the meeting date for the second Technical Advisory Panel on Medicare Trustee Reports on Friday, September 30, 2016 in Washington, DC.

DATES: The meeting will be held on Friday, September 30, 2016 from 9:00 a.m. to 5:00 p.m.. Eastern Daylight Time (EDT) and it is open to the public.

ADDRESSES: This will be a virtual meeting held via WebEx.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Oellerich, Designated Federal Officer, at the Office of Human Services Policy, Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–8410.

SUPPLEMENTARY INFORMATION:

I. Purpose: The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Secretary on how the Medicare Trustees might more accurately estimate health spending in the short and long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Committee is composed of 9 members appointed by the Assistant Secretary for Planning and Evaluation.

II. Agenda. The Panel will likely hear presentations from the HHS Office of the Actuary on issues they wish the panel to address. This may be followed by HHS staff presentations regarding the methods and assumptions for the short range (10 year) Part A, Part B and Part D. After any presentations, the Panel will deliberate openly on the topics. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

III. Meeting Attendance. The Friday, September 30, 2016 meeting is open to the public through WebEx; however, WebEx attendance is limited to space available.

Meeting Registration

The public may join the meeting through WebEx. Space is limited and registration is *required* in order to attend. Registration may be completed by emailing or faxing all the following information to Dr. Donald Oellerich at *don.oellerich@hhs.gov* or fax 202–690–6562:

Name.
Company name.
Postal address.
Email address.

A confirmation email with the WebEx information will be sent to the registrants shortly after completing the registration process. If language interpretation or other reasonable accommodation for a disability is needed, please contact Dr. Oellerich, no later than Sept 24, 2016 by sending an email message to *don.oellerich@hhs.gov* or calling 202–690–8410.

IV. Special Accommodations. Individuals requiring special accommodations must include the request for these services during registration.

V. Copies of the Charter. The Secretary's Charter for the Technical Advisory Panel on Medicare Trustee Reports is available upon request from Dr. Donald Oellerich at *don.oellerich@hhs.gov* or by calling 202–690–8410.

Dated: September 16, 2016.

Kathryn E. Martin,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–22890 Filed 9–21–16; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel: Review of MIRA Applications.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikebr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel: To Review COBRE Grant Applications.

Date: November 2, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN22, Bethesda, MD 20892–6200, 301–594–3663, *sidorova@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 16, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22810 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: October 10–11, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: William Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *Benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorder and Stroke Initial Review Group; Neurological Sciences and Disorders A.

Date: October 24–25, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0288, *natalia.strunnikova@nih.gov.*

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Subcommittee.

Date: October 24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Elizabeth Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *webbere@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorder and Stroke Initial Review Group; Neurological Sciences and Disorders B.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel and Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0288, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 16, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22814 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Immunopathology and Immunotherapy.

Date: October 6, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Processes.

Date: October 11–12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group: Hemostasis and Thrombosis Study Section.

Date: October 20, 2016.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Vascular and Hematology IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group: Language and Communication Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: Ocular Surface, Cornea, and Refractive Error.

Date: October 20, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Epilepsy, Spinal Cord Injury, and Protein, Processing in Neurodegeneration.

Date: October 20, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: October 20–21, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington DC Downtown, 1199 Vermont Avenue NW., Washington, DC 20005.

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Mechanisms of Antimicrobial Resistance.

Date: October 20, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Language and Communication.

Date: October 20, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street NW., Washington, DC 20037.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 16, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22815 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

Name of Committee: Board of Scientific Advisors.

Open: October 31, 2016, 1:00 p.m. to 4:00 p.m.

Agenda: RFA and RFP Concept Reviews.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room TE406, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NCI Shady Grove has instituted stringent procedures for entrance into the NCI Shady Grove building. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 16, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22817 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Development of an Antibody-Drug Conjugate for Use in PhotoImmunoTherapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the U.S. Patents and Patent Applications listed in the Summary Information section of this notice to Aspyrian Therapeutics, Inc. ("Aspyrian") located in San Diego, California USA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before October 7, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Thomas Clouse, J.D., Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702 Telephone: (240)–276–5530; Facsimile: (240)–276–5504 Email: *thomas.clouse@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

United States Provisional Patent Application No. 62/202,252, filed August 7, 2015 "Near Infrared PhotoImmunoTherapy (NIR–PIT) of Suppressor Cells to Treat Cancer" [HHS Reference No. E–231–2015/0–US–01]; and

PCT Patent Application PCT/US2016/045090, filed August 2, 2016 "Near Infrared PhotoImmunoTherapy (NIR–PIT) of Suppressor Cells to Treat Cancer" [HHS Reference No. E–231–2015/0–PCT–02].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for the following: "Use of photosensitizing antibody-fluorophore conjugate defined by the Licensed Patent Rights by itself for PhotoImmunoTherapy (PIT), or in combination with cancer therapeutic agents, to treat cancer or hyperplasia."

This technology discloses the concept of binding an anti-foxp3+ antibody to IR700 to bind to foxp3+ T-cells. When irradiated with near infrared light localized at the site of the solid tumor, controlled local knockdown of foxp3+ negative regulatory T-cells in tumors results in rapid tumor death without the severe autoimmune response that is induced by systemic knock-down of foxp3+ T-cells. Theoretically, this technology can be used in a broad spectrum of patients with a variety of solid cancers including those with multiple distant metastasis as foxp3+ T-cells are generally believed to be critical to immunotolerance found in cancers. By treating a single local site with this technology, systemic host immunity against in situ cancers can be dramatically activated, leading to rapid tumor regression at the treated lesion as well as distant metastatic lesions untreated with the near infrared light while inducing minimal side effects.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: September 16, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–22820 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Mental Health Special Emphasis Panel, September 14, 2016, 10:00 a.m. to September 14, 2016, 11:00 a.m., National Institutes of Health, NSC, 6001 Executive Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on August 30, 2016, 81 FR 59643.

The meeting notice is being cancelled due to reviewer conflicts. The review will be rescheduled.

Dated: September 16, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22812 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: October 26, 2016.

Time: 9:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30, National Institutes of Health/NIAID, 5601 Fishers Lane, Drive, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 16, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22819 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: October 13, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Jay Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G11A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–669–5045, *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 15, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22818 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *jiali@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 16, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22813 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: October 18–19, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: October 18–19, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, *weikts@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Washington DC, Georgetown, 2401 M Street NW., Washington, DC 20037.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Immunology.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *alok.mulky@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anita Szajek, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–827–6276, *anita.szajek@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group: Cellular, Molecular and Integrative Reproduction Study Section

Date: October 20–21, 2016

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications

Place: New Orleans Marriott, 555 Canal Street, New Orleans, LA 70131.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *hunnicuttgr@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group: Clinical and Integrative Diabetes and Obesity Study Section.

Date: October 20–21, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Henghan Way, Rockville, MD 20850.

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group: Social Sciences and Population Studies A Study Section.

Date: October 20–21, 2016.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group: Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: October 20–21, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: Grant applications.

Place: The Ritz-Carlton, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 16, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22816 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group: Training and Workforce Development Subcommittee—A Review of T32 Applications.

Date: December 8–9, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Cambria Suites Rockville, 1 Helen Heneghan Way, Rockville, MD 20850.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedica Research and Research Training, National Institutes of Health, HHS)

Dated: September 16, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22811 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; NICHD ZIKV R21 Teleconference Review.

Date: October 25, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6710B, 6710B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Sherry L. Dupere, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, Rockledge 6710B, 6710B Rockledge Drive, Bethesda, MD 20817, 301–451–3415, *duperes@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 7, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, Rockledge 6710B, 6710B Rockledge Drive, Bethesda, MD 20817, (301) 435–6884, *leszczyd@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 14, 2016.

Time: 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, Rockledge 6710B, 6710B Rockledge Drive, Bethesda, MD 20817, (301) 435–6884, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: September 16, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22809 Filed 9–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0848]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The National Offshore Safety Advisory Committee and its Subcommittee will hold meetings in Houston, TX to discuss the safety of operations and other matters affecting the offshore oil and gas industry. These meetings are open to the public.

DATES: The Well Intervention Subcommittee of the National Offshore

Safety Advisory Committee will meet on Tuesday, November 1, 2016, from 1 p.m. to 2:30 p.m. and the full Committee will meet on Wednesday, November 2, 2016, from 8:30 a.m. to 6 p.m. (All times are Central Daylight Time). These meetings may end early if the Committee has completed its business, or they may be extended based on the number of public comments.

ADDRESSES: The meetings will be held at the Offices of Beirne, Maynard and Parsons, L.L.P., 25th Floor Conference Room, 1300 Post Oak Blvd., Houston, TX 77056. Phone (713) 968–3811.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Instruction: To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the "Agenda" section below. Written comments for distribution to Committee members must be submitted no later than October 14, 2016, if you want the Committee members to be able to review your comments before the meeting, and must be identified by docket number USCG–2016–0848. Written comments may be submitted using the Federal e-Rulemaking Portal at *http://www.regulations.gov.* For technical difficulties, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket or to read documents or comments related to this notice, go to *http://www.regulations.gov,* insert USCG–2016–0848 in the Search box, press Enter, and then click on the item you wish to view.

A public oral comment period will be held during the meeting on November 2, 2016, and speakers are requested to limit their comments to 3 minutes. Contact one of the individuals listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander Jose Perez, Designated Federal Officer of the National Offshore Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King, Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1410, fax (202) 372–8382 or email *jose.a.perez3@uscg.mil,* or Mr. Patrick Clark, telephone (202) 372–1358, fax (202) 372–8382 or email *Patrick.w.clark@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* Title 5 United States Code Appendix. The National Offshore Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within U.S. Coast Guard jurisdiction.

A copy of all meeting documentation including the agenda, any draft final reports, new task statement and presentations will be available at *https://homeport.uscg.mil/NOSAC* no later than October 21, 2016. Alternatively, you may contact Mr. Patrick Clark as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

Day 1

The Subcommittee on Well Intervention Activities on the Outer Continental Shelf will meet on November 1, 2016 from 1 p.m. to 2:30 p.m. (Central Daylight Time) to review, discuss, and formulate recommendations.

Day 2

The National Offshore Safety Advisory full Committee will hold a public meeting on November 2, 2016 from 8:00 a.m. to 6:00 p.m. (Central Daylight Time) to review and discuss the progress of, and any reports and recommendations received from, the above listed Subcommittee from their deliberations on November 1, 2016. The Committee will then use this information and consider public comments in formulating recommendations to the U.S. Coast Guard. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendation portions of the meeting and during the public comment period, see Agenda item (6).

A complete agenda for November 2, 2016 Committee meeting is as follows:

(1) Welcoming remarks.

(2) General Administration and accept minutes from March 2016 National Offshore Safety Advisory Committee public meeting.

(3) Current Business—Presentation and discussion of updates and a final report to include recommendations from the Subcommittee on Well Intervention.

(4) New Business.

(a) Discussion of any new business items.

(b) Introduction of a task statement requesting National Offshore Safety Advisory Committee's input on the draft Navigation and Vessel Inspection Circular on Cyber Security for Marine Operations on the U.S. Outer Continental Shelf.

(5) Presentations on the following matters:

(a) Eighth Coast Guard District Officer in Charge Marine Inspection Risk Based Inspection Program;

(b) Oil Companies International Marine Forum presentation on their Offshore Vessel Inspection Database Program;

(c) Update from the Bureau of Safety and Environmental Enforcement;

(d) Strengthening the Safety Culture of the Offshore Oil and Gas Industry Report presented by representatives from the Transportation Research Board.

(6) Public comment period.

Minutes

Meeting minutes from this public meeting will be available for public view and copying within 90 days following the close of the meeting at the *https://homeport.uscg.mil/NOSAC* Web site.

Dated: September 7, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2016–22839 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4277–DR; Docket ID FEMA–2016–0001]

Louisiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4277–DR), dated August 14, 2016, and related determinations.

DATES: Effective August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 31, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–22781 Filed 9–21–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0005]

Individual Assistance Declarations Factors Guidance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the *Individual Assistance Declarations Factors Guidance.*

DATES: Comments must be received by October 24, 2016.

ADDRESSES: Comments must be identified by docket ID FEMA–2014–0005 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Mark Millican, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (phone) 202–212–3221 or (email) *FEMA-IA-Regulations@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed guidance is available in docket ID FEMA–2014–0005. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 8NE, 500 C Street SW., Washington, DC 20472.

II. Background

Section 1109 of the Sandy Recovery Improvement Act of 2013[1] requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48(b) that FEMA uses to determine whether to recommend provision of Indiviual Assistance during a major disaster. On November 12, 2015, FEMA published a notice of proposed rulemaking as part of its effort to meet the requirements in section 1109 of the Sandy Recovery Improvement Act of 2013. 80 FR 70116. FEMA is now seeking comment on its proposed *Individual Assistance Declarations Factors Guidance,* which is intended to provide additional information to the public regarding the manner in which FEMA is proposing to evaluate a request for a major disaster declaration authorizing Individual Assistance.

The proposed guidance does not have the force or effect of law.

FEMA seeks comment on the proposed guidance, which is available online at *http://www.regulations.gov* in docket ID FEMA–2014–0005, and whether there is any additional information that FEMA could include in the guidance to provide further clarity. Based on the comments received, FEMA may make appropriate revisions to the proposed guidance, and as appropriate, revisions to the final rule. When FEMA issues a final guidance, FEMA will publish a notice of availability for the final guidance in the **Federal Register** and make the final guidance available at *http://www.regulations.gov.*

Authority: Pub. L. 113–2.

Dated: September 14, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–22796 Filed 9–21–16; 8:45 am]

BILLING CODE 9111–23–P

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[1] Public Law 113–2, § 1109.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Shelby (FEMA Docket No.: B–1611).	City of Hoover (15–04–7711P).	The Honorable Gary Ivey, Mayor, City of Hoover, 100 Municipal Lane, Hoover, AL 35216.	Building Inspections Department, 2020 Valleydale Road, Hoover, AL 35244.	Jun. 13, 2016	010123
Shelby (FEMA Docket No.: B–1611).	Unincorporated areas of Shelby County, (15–04–7711P).	The Honorable Rick Shepherd, Chairman, Shelby County Commission, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	Jun. 13, 2016	010191
Arizona: Maricopa (FEMA Docket No.: B–1611).	City of Scottsdale, (15–09–1857P).	The Honorable W.J. "Jim" Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Stormwater and Floodplain Management Department, 7447 East Indian School Road, Suite 125, Scottsdale, AZ 85251.	Jun. 10, 2016	045012
Arkansas:					
Van Buren (FEMA Docket No.: B–1555).	City of Clinton, (15–06–3659P).	The Honorable Richard McCormac, Mayor, City of Clinton, P.O. Box 970, Clinton, AR 72031.	City Hall, 342 Main Street, Clinton, AR 72031.	Mar. 4, 2016	050211
Van Buren (FEMA Docket No.: B–1555).	Unincorporated areas of Van Buren County, (15–06–3659P).	The Honorable Roger Hooper, Van Buren County Judge, P.O. Box 60, Clinton, AR 72031.	Van Buren County Clerk's Office, 1414 Highway 65 South, Clinton, AR 72031.	Mar. 4, 2016	050566
White (FEMA Docket No.: B–1614).	City of Beebe, (15–06–1373P).	The Honorable Mike Robertson, Mayor, City of Beebe, 321 North Elm Street, Beebe, AR 72012.	City Hall, 321 North Elm Street, Beebe, AR 72012.	Jun. 22, 2016	050223
White (FEMA Docket No.: B–1614).	Unincorporated areas of White County, (15–06–1373P).	The Honorable Michael Lincoln, White County Judge, 300 North Spruce Street, Searcy, AR 72143.	White County Office of Emergency Management, 417 North Spruce Street, Searcy, AR 72143.	Jun. 22, 2016	050467
California: Santa Barbara (FEMA Docket No.: B–1611).	City of Santa Barbara, (15–09–1420P).	The Honorable Helene Schneider, Mayor, City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA 93102.	Public Works Department, 630 Garden Street, Santa Barbara, CA 93101.	Jun. 13, 2016	060335
Colorado:					
Douglas (FEMA Docket No.: B–1614).	Town of Castle Rock, (16–08–0265P).	The Honorable Paul Donahue, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Utilities Department, 175 Kellogg Court, Castle Rock, CO 80109.	Jun. 24, 2016	080050
Jefferson (FEMA Docket No.: B–1618).	Unincorporated areas of Jefferson County, (15–08–0540P).	The Honorable Casey Tighe, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Department of Planning and Zoning, 100 Jefferson County Parkway, Golden, CO 80419.	Jul. 22, 2016	080087
Florida:					
Alachua (FEMA Docket No.: B–1611).	City of Hawthorne, (15–04–8602P).	The Honorable Matthew Surrency, Mayor, City of Hawthorne, P.O. Box 2413, Hawthorne, FL 32640.	Building Department, 6700 Southeast 221st Street, Hawthorne, FL 32640.	Jun. 16, 2016	120682

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Effective date of modification	Community No.
Alachua (FEMA Docket No.: B–1611).	Unincorporated areas of Alachua County, (15–04–A130P).	The Honorable Robert "Hutch" Hutchinson, Chairman, Alachua County Board of Commissioners, 12 Southeast 1st Street, Gainesville, FL 32601.	Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32601.	Jun. 21, 2016	120001
Bay (FEMA Docket No.: B–1611).	City of Panama City Beach, (15–04–9706P).	The Honorable Gayle Oberst, Mayor, City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.	Engineering Department, 110 South Arnold Road, Panama City Beach, FL 32413.	Jun. 21, 2016	120013
Bay (FEMA Docket No.: B–1614).	Unincorporated areas of Bay County, (15–04–8357P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	Jun. 27, 2016	120004
Bay (FEMA Docket No.: B–1611).	Unincorporated areas of Bay County, (15–04–9706P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	Jun. 21, 2016	120004
Collier (FEMA Docket No.: B–1611).	Unincorporated areas of Collier County, (16–04–1863P).	The Honorable Donna Fiala, Chair, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Floodplain Management Section, 2800 North Horseshoe Drive, Naples, FL 34104.	Jun. 15, 2016	120067
Monroe (FEMA Docket No.: B–1611).	City of Marathon, (16–04–1559P).	The Honorable Mark Senmartin, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	Jun. 16, 2016	120681
Monroe (FEMA Docket No.: B–1614).	Unincorporated areas of Monroe County, (16–04–0898P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jun. 30, 2016	125129
Monroe (FEMA Docket No.: B–1611).	Unincorporated areas of Monroe County, (16–04–1380P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jun. 17, 2016	125129
Monroe (FEMA Docket No.: B–1611).	Unincorporated areas of Monroe County, (16–04–1801P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jun. 17, 2016	125129
Sarasota (FEMA Docket No.: B–1614).	Unincorporated areas of Sarasota County, (16–04–1646P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Jun. 23, 2016	125144
Seminole (FEMA Docket No.: B–1614).	City of Altamonte Springs, (16–04–0514P).	The Honorable Patricia Bates, Mayor, City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, FL 32701.	Public Works Department, 950 Calabria Drive, Altamonte Springs, FL 32701.	Jun. 29, 2016	120290
St. Johns (FEMA Docket No.: B–1611).	Unincorporated areas of St. Johns County, (15–04–9500P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County, Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	Jun. 13, 2016	125147
St. Johns (FEMA Docket No.: B–1614).	Unincorporated areas of St. Johns County, (16–04–1087P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	Jun. 28, 2016	125147
Maine: Hancock (FEMA Docket No.: B–1614).	Town of Gouldsboro, (15–01–2374P).	The Honorable Dana Rice, Chair, Town of Gouldsboro Board of Selectmen, P.O. Box 68, Prospect Harbor, ME 04669.	Town Hall, 59 Main Street, Prospect Harbor, ME 04669.	Jun. 24. 2016	230283
New Mexico: Bernalillo (FEMA Docket No.: B–1618).	Unincorporated areas of Bernalillo County, (15–06–4028P).	The Honorable Art De La Cruz, Chairman, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Department, 2400 Broadway Southeast, Albuquerque, NM 87102.	Jun 7, 2016	350001
North Carolina:					
Buncombe (FEMA Docket No.: B–1614).	Unincorporated areas of Buncombe County, (15–04–4244P).	The Honorable David Gantt, Chairman, Buncombe County Board of Commissioners, 200 College Street,, Suite 316, Ashville, NC 28801.	Buncombe County Planning Department, 46 Valley Street, Ashville, NC 28801.	Jun. 30, 2016	370031
Forsyth (FEMA Docket No.: B–1611).	City of Winston-Salem, (15–04–9863P).	The Honorable Allen Joines, Mayor, City of Winston-Salem, 101 North Main Street, Suite 150, Winston Salem, NC 27101.	City Hall, 101 North Main Street, Winston-Salem, NC 27101.	Jun. 16, 2016	375360
Ohio: Montgomery (FEMA Docket No.: B–1611).	City of Centerville, (15–05–1744P).	The Honorable Brooks Compton, Mayor, City of Centerville, 350 Roselake Drive, Centerville, OH 45458.	Public Works Department, 7970 South Suburban Road, Centerville, OH 45458.	Jun. 15, 2016	390408
Pennsylvania:					
Elk (FEMA Docket No.: B–1618).	Borough of Johnsonburg, (14–03–2810P).	The Honorable Theresa Cherry, Mayor, Borough of Johnsonburg, 100 Main Street, Johnsonburg, PA 15845.	Borough Hall, 100 Main Street, Johnsonburg, PA 15845.	Jun. 27, 2016	420443
Elk (FEMA Docket No.: B–1618).	Township of Ridgway, (14–03–2810P).	The Honorable Richard Glover, Chairman, Township of Ridgway Board of Supervisors, 1537–A Montmorenci Road, Ridgway, PA 15853.	Township Municipal Building, 1537–A Montmorenci Road, Ridgway, PA 15853.	Jun. 27, 2016	420445
Lebanon (FEMA Docket No.: B–1605).	Township of Heidelberg, (15–03–0736P).	The Honorable Paul Fetter, Chairman, Township of Heidelberg Board of Supervisors, 111 Mill Road, Schaefferstown, PA 17088.	Township Hall, 111 Mill Road, Schaefferstown, PA 17088.	Jun. 16, 2016	420969

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Effective date of modification	Community No.
Lebanon (FEMA Docket No.: B–1605).	Township of Millcreek, (15–03–0736P).	The Honorable Donald R. Leibig, Chairman, Township of Millcreek Board of Supervisors, 81 East Alumni Avenue, Newmanstown, PA 17073.	Planning and Zoning Department, 400 South 8th Street, Newmanstown, PA 17042.	Jun. 16, 2016	420574
South Carolina: Berkeley (FEMA Docket No.: B–1614).	Unincorporated areas of Berkeley County, (16–04–1799P).	The Honorable William W. Peagler, III, Chairman, Berkeley County Council, 1003 Highway 52, Moncks Corner, SC 29461.	Berkeley County Planning and Zoning Department, 1003 Highway 52, Moncks Corner, SC 29461.	Jun. 30, 2016	450029
South Dakota:					
Lawrence (FEMA Docket No.: B–1614).	City of Hill City, (15–08–0904P).	The Honorable Dave Gray, Mayor, City of Hill City, P.O. Box 395, Hill City, SD 57745.	Planning Department, 243 Deerfield Road, Hill City, SD 57745.	Jun. 30, 2016	460064
Lawrence (FEMA Docket No.: B–1614).	City of Spearfish, (15–08–0993P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 5th Street, Spearfish, SD 57783.	Municipal Services Centre, 625 5th Street, Spearfish, SD 57783.	Jun. 24, 2016	460046
Pennington (FEMA Docket No.: B–1614).	Unincorporated areas of Pennington County, (15–08–0904P).	The Honorable Lyndell H. Petersen, Chairman, Pennington County Board of Commissioners, 130 Kansas City Street, Suite 100, Rapid City, SD 57701.	Pennington County Planning Department, 832 St. Joseph Street, Rapid City, SD 57701.	Jun. 30, 2016	460116
Texas:					
Bexar (FEMA Docket No.: B–1611).	City of San Antonio, (15–06–0951P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Jun. 16, 2016	480045
Bexar (FEMA Docket No.: B–1614).	City of San Antonio, (15–06–4534P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Jun. 22, 2016	480045
Bexar (FEMA Docket No.: B–1614).	Unincorporated areas of Bexar County, (15–06–2058P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	Jun. 27, 2016	480035
Dallas (FEMA Docket No.: B–1614).	City of Mesquite, (15–06–2748P).	The Honorable Stan Pickett, Mayor, City of Mesquite, 1515 North Galloway Avenue, Mesquite, TX 75149.	Engineering Division, 1515 North Galloway Avenue, Mesquite, TX 75149.	Jun. 17, 2016	485490
Denton (FEMA Docket No.: B–1611).	City of Carrollton, (15–06–3828P).	The Honorable Matthew Marchant, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Building Inspections Department, 1945 East Jackson Road, Carrollton, TX 75006.	Jun. 13, 2016	480167
Denton (FEMA Docket No.: B–1611).	City of Plano, (15–06–3828P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086.	City Hall, 1520 K Avenue, Plano, TX 75074.	Jun. 13, 2016	480140
Denton (FEMA Docket No.: B–1611).	City of The Colony, (15–06–3828P).	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	Engineering Department, 6800 Main Street, The Colony, TX 75056.	Jun. 13, 2016	481581
Harris (FEMA Docket No.: B–1614).	Unincorporated areas of Harris County, (15–06–0921P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Houston, TX 77002.	Jun. 29, 2016	480287
Montgomery (FEMA Docket No.: B–1611).	City of Conroe, (15–06–1222P).	The Honorable Webb K. Melder, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	Department of Public Works, Engineering Division, 300 West Davis Street, Conroe, TX 77301.	Jun. 13, 2016	480484
Wichita (FEMA Docket No.: B–1611).	City of Wichita Falls, (15–06–2136P).	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	City Hall, 1300 7th Street, Room 105, Wichita Falls, TX 76301.	Jun. 14, 2016	480662
Utah:					
Davis (FEMA Docket No.: B–1611).	City of Farmington, (15–08–1200P).	The Honorable H. James Talbot, Mayor, City of Farmington, P.O. Box 160, Farmington, UT 84025.	City Hall, 160 South Main Street, Farmington, UT 84025.	Jun. 24, 2016	490044
Davis (FEMA Docket No.: B–1611).	Unincorporated areas of Davis County, (15–08–1200P).	The Honorable John Petroff, Jr., Chairman, Davis County Board of Commissioners, P.O. Box 618, Farmington, UT 84025.	Davis County Planning Department, 61 South Main Street, Room 304, Farmington, UT 84025.	Jun. 24, 2016	490038
Washington (FEMA Docket No.: B–1614).	City of St. George, (16–08–0186P).	The Honorable Jon Pike, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	Jun. 27, 2016	490177
Washington (FEMA Docket No.: B–1611).	Unincorporated areas of Washington County, (15–08–1225P).	The Honorable Alan D. Gardner, Chairman, Washington County Board of Commissioners, 197 East Tabernacle Street, St. George, UT 84770.	Washington County Planning and Zoning Department, 197 East Tabernacle Street, St. George, UT 84770.	Jun. 15, 2016	490224
Virginia:					

State and county	Location and case No.	Chief executive, officer of community	Community map repository	Effective date of modification	Community No.
Chesterfield (FEMA Docket No.: B–1614).	Unincorporated areas of Chesterfield County, (15–03–1125P).	The Honorable Steve A. Elswick, Chairman, Chesterfield County Board of Supervisors, P.O. Box 40, Chesterfield, VA 23832.	Chesterfield County Department of Environmental Engineering, 9800 Government Center Parkway, Chesterfield, VA 23832.	Jun. 22, 2016	510035
Prince William (FEMA Docket No.: B–1618).	Unincorporated areas of Prince William County, (16–03–0467P).	The Honorable Corey A. Stewart, Chairman At-Large, Prince William County, Board of Supervisors, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Jun. 30, 2016	510119

[FR Doc. 2016–22894 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4277–DR; Docket ID FEMA–2016–0001]

Louisiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4277–DR), dated August 14, 2016, and related determinations.

DATES: *Effective Date:* September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 14, 2016.

St. James and West Baton Rouge Parishes for Individual Assistance.

Assumption, Cameron, St. Charles, St. James, St. John the Baptist, and West Baton Rouge Parishes for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–22779 Filed 9–21–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1646]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 18, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Colorado: Teller	City of Woodland Park (16–08–0585P).	The Honorable Neil Levy, Mayor, City of Woodland Park, City Hall, 220 West South Avenue, Woodland Park, CO 80866.	City Hall, 220 West South Avenue, Woodland Park, CO 80866.	*http://www.msc.fema.gov/lomc.*	Nov. 3, 2016	080175
Idaho:						
Bonneville	City of Ammon (16–10–0506P).	The Honorable Dana Kirkham, Mayor, City of Ammon, City Hall, 2135 South Ammon Road, Ammon, ID 83406.	City Hall, 2135 South Ammon Road, Ammon, ID 83406.	*http://www.msc.fema.gov/lomc*	Nov. 18, 2016	160028
Bonneville	Unincorporated Areas of Bonneville County (16–10–0506P).	Mr. Roger Christensen, Chairman, Bonneville County Board of Commissioners, 605 North Capital Avenue, Idaho Falls, ID 83402.	Bonneville County Courthouse, 605 North Capital Avenue, Idaho Falls, ID 83402.	*http://www.msc.fema.gov/lomc*	Nov. 18, 2016	160027
Illinois:						
Will	City of Lockport (15–05–2936P).	The Honorable Steven Streit, Mayor, City of Lockport, 222 East 9th Street, Lockport, IL 60441.	Public Works and Engineering, 17112 South Prime Boulevard, Lockport, IL 60441.	*http://www.msc.fema.gov/lomc*	Oct. 31, 2016	170703
Will	City of Naperville (15–05–5882P).	The Honorable Steve Chirico, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	*http://www.msc.fema.gov/lomc*	Nov. 7, 2016	170213
Will	Unincorporated Areas of Will County (15–05–2936P).	The Honorable Lawrence M. Walsh, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	Oct. 31, 2016	170695
Will	Unincorporated Areas of Will County (15–05–5882P).	The Honorable Lawrence M. Walsh, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street Suite 100, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	Nov. 7, 2016	170695
Indiana:						
Delaware	City of Muncie (16–05–1816P).	The Honorable Dennis Tyler, Mayor, City of Muncie, City Hall, 300 North High Street 3rd Floor, Muncie, IN 47342.	Delaware County Building, 100 West Main Street, Room 206, Muncie, IN 47305.	*http://www.msc.fema.gov/lomc*	Nov. 10, 2016	180053
Delaware	City of Muncie (16–05–2551P).	The Honorable Dennis Tyler, Mayor, City of Muncie, City Hall, 3rd Floor, 300 North High Street, Muncie, IN 47305.	Delaware County Building, 100 West Main Street, Room 206, Muncie, IN 47305.	*http://www.msc.fema.gov/lomc*	Oct. 14, 2016	180053

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Delaware	Town of Yorktown (16–05–2551P).	The Honorable Rich Lee, President, Town of Yorktown, 9800 West Smith Street, Yorktown, IN 47396.	Town Hall, 9800 West Smith Street, Yorktown, IN 47396.	*http://www.msc.fema.gov/lomc*	Oct. 14, 2016	180361
Hamilton	City of Noblesville (16–05–2763P).	The Honorable John Ditslear, Mayor, City of Noblesville, 16 South 10th Street, Noblesville, IN 46060.	City Hall, Department of Planning and Zoning, 16 South 10th Street Suite 150, Noblesville, IN 46060.	*http://www.msc.fema.gov/lomc*	Nov. 4, 2016	180082
Hamilton	UnincorporatedAreas of Hamilton County (16–05–2763P).	The Honorable Steve Dillinger, President, Hamilton County Board of, Commissioners, 1 Hamilton County Square, Suite 157, Noblesville, IN 46060.	Hamilton County Government and Judicial Center, 1 Hamilton County Square, Noblesville, IN 46060.	*http://www.msc.fema.gov/lomc*	Nov. 4, 2016	180080
Kansas: Rice	City of Lyons (16–07–1283P).	The Honorable Michael Young, Mayor, City of Lyons, 201 West Main Street, P.O. Box 808, Lyons, KS 67554.	City Hall, 201 West Main Street, Lyons, KS 67554.	*http://www.msc.fema.gov/lomc*	Nov. 4, 2016	200295
Minnesota: Clay	City of Moorhead (16–05–3467P).	The Honorable Del Rae Williams, Mayor, City of Moorhead, Moorhead City Hall, 500 Center Avenue, Moorhead, MN 56561.	City Hall, 500 Center Avenue, Moorhead, MN 56561.	*http://www.msc.fema.gov/lomc*	Nov. 11, 2016	275244
Nebraska: Lincoln	City of North Platte (16–07–0952P).	The Honorable Dwight Livingston, Mayor, City of North Platte, 211 West 3rd Street, North Platte, NE 69101.	City Hall, 211 West 3rd Street, North Platte, NE 69101.	*http://www.msc.fema.gov/lomc*	Oct. 26, 2016	310143
New Jersey: Monmouth.	Borough of Highlands (16–02–0850P).	The Honorable Frank Nolan, Mayor, Borough of Highlands, Administrative Offices, 42 Shore Drive, Highlands, NJ 07732.	Highlands Borough Hall, 171 Bay Avenue, Highlands, NJ 07732.	*http://www.msc.fema.gov/lomc*	Nov. 28, 2016	345297
Virginia: Independent City.	City of Newport News (16–03–0266P).	The Honorable McKinley L. Price, Mayor, City of Newport News, City Council, 2400 Washington Avenue, Newport News, VA 23607.	Department of Engineering, 2400 Washington Avenue, Newport News, VA 23607.	*http://www.msc.fema.gov/lomc*	Nov. 4, 2016	510103
Wisconsin: Dane	City of Madison (16–05–3204P).	The Honorable Paul R. Soglin, Mayor, City of Madison, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	City Hall, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	550083
Dane	Unincorporated Areas of Dane County (16–05–3204P).	Mr. Joe Parisi, County Executive, Dane County, City County Building, 210 Martin Luther King Jr. Boulevard, Room 421, Madison, WI 53703.	City County Building, 210 Martin Luther King Jr. Boulevard, Room 116, Madison, WI 53703.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	550077
Eau Claire	Unincorporated Areas of Eau Claire County (16–05–4739X).	Mr. Gregg Moore, County Board Chair, Eau Claire County, 721 Oxford Avenue, Eau Claire, WI 54703.	Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, WI 54703.	*http://www.msc.fema.gov/lomc*	Oct. 26, 2016	555552
Kenosha	Unincorporated Areas of Kenosha County (16–05–2093P).	Mr. Edward Kubicki, County Board Supervisor, Kenosha County, Administrative Building, 1010 56th Street, Kenosha, WI 53140.	Kenosha County Department of Planning and Development, 19600 75th Street, Kenosha, WI 53140.	*http://www.msc.fema.gov/lomc*	Oct. 25, 2016	550523

[FR Doc. 2016–22787 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification
California: Sacramento (FEMA Docket No.: B–1608).	Unincorporated Areas of Sacramento County (15–09–2246P).	The Honorable Phil Serna, Chairman, Board of Supervisors, Sacramento County, 700 H Street, Suite 2450, Sacramento, CA 95814.	Sacramento County, Department of Water Resources, 827 7th Street, Room 301, Sacramento, CA 95814.	Mar. 21, 2016	060262
Connecticut: New Haven (FEMA Docket No.: B–1619).	Town of Madison (15–01–1621P).	Mr. Fillmore McPherson, First Selectman, Town of Madison, Town Office, 8 Campus Drive, Madison, CT 06443.	Town Offices, 8 Campus Drive, Madison, CT 06443.	Jul. 8, 2016	090079
Idaho:					
Ada FEMA Docket No.: B–1619).	Unincorporated Areas of Ada County (16–10–0348X).	Mr. Jim Tibbs, Chairman, Board of County Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	Jun. 2, 2016	160001
Ada (FEMA Docket No.: B–1626).	Unincorporated Areas of Ada County (16–10–0446P).	Mr. Jim Tibbs, Chairman, Board of County Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	Aug. 9, 2016	160001
Illinois:					
McHenry (FEMA Docket No.: B–1619).	Unincorporated Areas of McHenry County (15–05–7970P).	The Honorable Joseph Gottemoller, Chairman, McHenry County Board, County Government Center, 2200 North Seminary Avenue, Woodstock, IL 60098.	County Government Center, 2200 North Seminary Avenue, Woodstock, IL 60098.	Jul. 18, 2016	170732
McHenry (FEMA Docket No.: B–1619).	Village of Fox River Grove (15–05–7970P).	The Honorable Robert J. Nunamaker, Village President, Village of Fox River Grove, 305 Illinois Street, Fox River Grove, IL 60021.	Village Hall, 305 Illinois Street, Fox River Grove, IL 60021.	Jul. 18, 2016	170477

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification
Sangamon FEMA Docket No.: B–1606).	City of Springfield (15–05–8063X).	The Honorable James O. Langfelder, Mayor, City of Springfield, 800 East Monroe, Springfield, IL 62701.	Public Works Department, 300 South 7th Street, Room 203, Springfield, IL 62701.	May 5, 2016	170604
Sangamon (FEMA Docket No.: B–1606).	Unincorporated Areas of Sangamon County (15–05–8063X).	The Honorable Andy Van Meter, Chairman, Sangamon County Board, 200 South 9th Street, Room 201, Springfield, IL 62701.	Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, IL 62701.	May 5, 2016	170912
Indiana: Hendricks (FEMA Docket No.: B–1626).	Unincorporated Areas of Hendricks County (16–05–2570P).	Mr. Michael E. Graham, Administrator to the County Commissioner, Hendricks County Government Center, 355 South Washington Street, Danville, IN 46122.	Hendricks County Government Center, 355 South Washington Street, Danville, IN 46122.	Jul. 7, 2016	180415
Iowa:					
Johnson (FEMA Docket No.: B–1619).	City of Coralville (15–07–1807P).	The Honorable John Lundell, Mayor, City of Coralville, 1512 7th Street, P.O. Box 5127, Coralville, IA 52241.	City Hall, 1512 7th Street, Coralville, IA 52241.	Jun. 24, 2016	190169
Johnson (FEMA Docket No.: B–1619).	Unincorporated Areas of Johnson County (15–07–1807P).	Mr. Rod Sullivan, Chairperson, Board of Supervisors, Johnson County Administration Building, 913 South Dubuque Street, Suite 204, Iowa City, IA 52240.	Johnson County, Planning and Zoning, 913 South Dubuque Street, Iowa City, IA 52240.	Jun. 24, 2016	190882
Kansas:					
Johnson (FEMA Docket No.: B–1619).	City of Olathe (16–07–0379P).	The Honorable Michael Copeland, Mayor, City of Olathe, P.O. Box 768, Olathe, KS 66051.	City Hall, Olathe Planning Office, 100 West Santa Fe Drive, Olathe, KS 66061.	Jul. 15, 2016	200173
Sedgwick (FEMA Docket No.: B–1606).	City of Wichita (15–07–0922P).	The Honorable Carl Brewer, Mayor, City of Wichita, City Hall, 455 North Main Street, 1st Floor, Wichita, KS 67202.	Office of Stormwater Management, 455 North Main Street, 8th Floor, Wichita, KS 67202.	Apr. 26, 2016	200328
Sedgwick (FEMA Docket No.: B–1606).	Unincorporated Areas of Sedgwick County (15–07–0922P).	The Honorable Richard Ranzau, Chairman, Sedgwick County Commission, 525 North Main No. 320, Wichita, KS 67203.	Sedgwick County Code Enforcement Office, 144 South Seneca Street, Wichita, KS 67213.	Apr. 26, 2016	200321
Minnesota:					
Anoka (FEMA Docket No.: B–1619).	City of Blaine (15–05–7513P).	The Honorable Tom Ryan, Mayor, City of Blaine, 10801 Town Square Drive Northeast, Blaine, MN 55449.	City Hall Offices, 10801 Town Square Drive Northeast, Blaine, MN 55449.	Jul. 1, 2016	270007
Clay (FEMA Docket No.: B–1619).	City of Moorhead (16–05–0672P).	The Honorable Del Rae Williams, Mayor, City of Moorhead, Moorhead City Hall, 500 Center Avenue, Moorhead, MN 56561.	City Hall, 500 Center Avenue, Moorhead, MN 56561.	Jun. 10, 2016	275244
New Jersey:					
Burlington (FEMA Docket No.: B–1626).	Township of Medford (16–02–0032P).	The Honorable Jeffrey Beenstock, Mayor, Township of Medford, 17 North Main Street, Medford, NJ 08055.	Municipal Center, 17 North Main Street, Medford, NJ 08055.	Aug. 5, 2016	340104
Middlesex (FEMA Docket No.: B–1626).	Borough of Middlesex (16–02–0324P).	The Honorable Ronald J. DiMura, Mayor, Borough of Middlesex, 1200 Mountain Avenue, Middlesex, NJ 08846.	Municipal Court, 1200 Mountain Avenue, Middlesex, NJ 08846.	Jul. 18, 2016	345305
Somerset (FEMA Docket No.: B–1626).	Borough of Bound Brook (16–02–0324P).	The Honorable Robert Fazen, Mayor, Borough of Bound Brook, 230 Hamilton Street, Bound Brook, NJ 08805.	Municipal Building, 230 Hamilton Street, Bound Brook, NJ 08805.	Jul. 18, 2016	340430
Somerset (FEMA Docket No.: B–1626).	Borough of South Bound Brook (16–02–0324P).	The Honorable Caryl Shoffner, Mayor, Borough of South Bound Brook, 12 Main Street, South Bound Brook, NJ 08880.	Municipal Building, 12 Main Street, South Bound Brook, NJ 08880.	Jul. 18, 2016	340445
Somerset (FEMA Docket No.: B–1626).	Township of Bridgewater (16–02–0324P).	The Honorable Daniel J. Hayes, Jr., Mayor, Township of Bridgewater, 100 Commons Way, Bridgewater, NJ 08807.	Department of Code Enforcement, 700 Garretson Road, Bridgewater, NJ 08807.	Jul. 18, 2016	340432
Somerset (FEMA Docket No.: B–1626).	Township of Bridgewater (16–02–0607P).	The Honorable Daniel J. Hayes Jr., Mayor, Township of Bridgewater, 100 Commons Way, Bridgewater, NJ 08807.	Township of Bridgewater Department of Code Enforcement, 700 Garretson Road, Bridgewater, NJ 08807.	Aug. 4, 2016	340432
Ohio:					
Franklin (FEMA Docket No.: B–1544).	City of Columbus (15–05–2037P).	The Honorable Michael B. Coleman, Mayor, City of Columbus, City Hall, 2nd Floor, 90 West Broad Street, Columbus, OH 43215.	Department of Development, 757 Carolyn Avenue, Columbus, OH 43224.	Dec. 18, 2015	390170
Franklin (FEMA Docket No.: B–1544).	City of Grandview Heights (15–05–2037P).	The Honorable Ray DeGraw, Mayor, City of Grandview Heights, City Hall, 1016 Grandview Avenue, Grandview Heights, OH 43212.	Development Office, 1525 West Goodale Boulevard, Grandview Heights, OH 43123.	Dec. 18, 2015	390172
Licking (FEMA Docket No.: B–1626).	Village of Granville (16–05–1572P).	The Honorable Melissa Hartfield, Mayor, Village of Granville, City Hall, 141 East Broadway Street, Granville, OH 43023.	Village Offices, 141 East Broadway Street, Granville, OH 43023.	Aug. 4, 2016	390330
Oregon:					
Lane (FEMA Docket No.: B–1619).	City of Creswell (16–10–0415X).	The Honorable Dave Stram, Mayor, City of Creswell, P.O. Box 276, Creswell, OR 97426.	City Hall, 13 South 1st Street, Creswell, OR 97426.	Jul. 5, 2016	410121

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification
Lane (FEMA Docket No.: B–1619).	Unincorporated Areas of Lane County (16–10–0415X).	The Honorable Faye Stewart, Commissioner, East Lane County, Lane County Public Service Building, 125 East 8th Street, Eugene, OR 97401.	Lane County Planning Department, Public Service Building, 125 East 8th Street, Eugene, OR 97401.	Jul. 5, 2016	415591
Tennessee: Hamblen (FEMA Docket No.: B–1619).	City of Morristown (15–04–8338P).	The Honorable Gary Chesney, Mayor, City of Morristown, 100 West 1st North Street, P.O. Box 1499, Morristown, TN 37816.	County Courthouse, 511 West 2nd North Street, Morristown, TN 37814.	May 27, 2016	470070

[FR Doc. 2016–22895 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of January 20, 2017 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 18, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-Watershed-Based Studies:

JACKSON COUNTY, MISSOURI AND INCORPORATED AREAS

[Docket No.: FEMA–B–1524]

Community	Community map repository address
City of Blue Springs	City Hall, 903 West Main Street, Blue Springs, MO 64015.
City of Buckner	Municipal Building, 315 South Hudson Street, Buckner, MO 64016.
City of Grain Valley	City Hall, 711 Main Street, Grain Valley, MO 64029.
City of Grandview	City Hall, 1200 Main Street, Grandview, MO 64030.
City of Greenwood	City Hall, 709 West Main Street, Greenwood, MO 64034.
City of Independence	Public Works Department, 111 East Maple Avenue, Independence, MO 64050.
City of Kansas City	City Hall, Planning and Development, 414 East 12th Street, 15th Floor, Kansas City, MO 64106.
City of Lake Lotawana	City Hall, 100 Lake Lotawana Drive, Lake Lotawana, MO 64086.
City of Lake Tapawingo	City Hall, 144 Anchor Drive, Lake Tapawingo, MO 64015.
City of Lee's Summit	City Hall, 220 Southeast Green Street, Lee's Summit, MO 64063.
City of Levasy	City Hall, 103 Pacific Street, Levasy, MO 64066.
City of Lone Jack	City Hall, 207 North Bynum Road, Lone Jack, MO 64070.
City of Oak Grove	City Hall, 1300 South Broadway Street, Oak Grove, MO 64075.

JACKSON COUNTY, MISSOURI AND INCORPORATED AREAS—Continued

[Docket No.: FEMA–B–1524]

Community	Community map repository address
City of Raytown	City Hall, 10000 East 59th Street, Raytown, MO 64133.
City of Sugar Creek	City Hall, 103 South Sterling Avenue, Sugar Creek, MO 64054.
Unincorporated Areas of Jackson County	Jackson County Courthouse, 415 East 12th Street, Suite 200, Kansas City, MO 64106.
Village of River Bend	Village Hall, 3923 North Cobbler Road, River Bend, MO 64058.
Village of Sibley	City Hall, 208 Front Street, Sibley, MO 64088.
Village of Unity	Facilities Building, 1901 Northwest Blue Parkway, Unity, MO 64065.

[FR Doc. 2016–22850 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of January 6, 2017 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Harris County, Texas and Incorporated Areas **Docket No.: FEMA–B–1343**	
City of Baytown	City Hall, 2401 Market Street, Baytown, TX 75522.
City of Deer Park	City Hall, 710 East San Augustine, Deer Park, TX 77536.
City of El Lago	City Hall, 411 Tallowood Drive, El Lago, TX 77586.
City of Galena Park	City Hall, 2000 Clinton Drive, Galena Park, TX 77547.
City of Houston	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.
City of Jacinto City	Jacinto City City Hall, 1301 Mercury Drive, Houston, TX 77029.
City of La Porte	City Hall, 604 West Fairmont Parkway, La Porte, TX 77571.
City of Morgan's Point	City Hall, 1415 East Main Street, Morgan's Point, TX 77571.
City of Nassau Bay	City Hall, 1800 Space Park Drive, Suite 200, Nassau Bay, TX 77058.
City of Pasadena	Municipal Services Building, 1114 Davis Street, Pasadena, TX 77506.
City of Seabrook	City Hall, 1700 1st Street, Seabrook, TX 77586.
City of Shoreacres	City Hall, 601 Shore Acres Boulevard, Shoreacres, TX 77571.
City of South Houston	City Hall, 1018 Dallas Street, South Houston, TX 77587.

Community	Community map repository address
City of Taylor Lake Village	City Hall, 500 Kirby Boulevard, Taylor Lake Village, TX 77586.
City of Webster	City Hall, 101 Pennsylvania Avenue, Webster, TX 77598.
Unincorporated Areas of Harris County	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.

[FR Doc. 2016–22848 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 18, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Coffee (FEMA Docket No.: B–1618).	City of Enterprise (15–04–A168P).	The Honorable Kenneth W. Boswell, Mayor, City of Enterprise, P.O. Box 311000, Enterprise, AL 36330.	City Hall, 501 South Main Street, Enterprise, AL 36331.	July 11, 2016	010045
Tuscaloosa (FEMA Docket No.: B–1614).	City of Tuscaloosa (16–04–1952X).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	July 5, 2016	010203
Arkansas: Benton (FEMA Docket No.: B–1618).	Unincorporated areas of Benton County (15–06–4245P).	The Honorable Robert D. Clinard, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	Planning Department, 905 Northwest 8th Street, Bentonville, AR 72712.	July 20, 2016	050419
Colorado:					
Boulder (FEMA Docket No.: B–1618).	City of Boulder (15–08–0360P).	The Honorable Suzanne Jones, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Planning and Development Services Department, 1739 Broadway Street, Boulder, CO 80302.	July 22, 2016	080024

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Weld (FEMA Docket No.: B–1618).	City of Greeley (15–08–0573P).	The Honorable Tom Norton, Mayor, City of Greeley, 1000 10th Street, Greeley, CO 80631.	City Hall, 1000 10th Street, Greeley, CO 80631.	July 14, 2016	080184
Weld (FEMA Docket No.: B–1618).	Unincorporated areas of Weld County (15–08–0573P).	The Honorable Mike Freeman, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Planning and Zoning Department, 1555 North 17th Avenue, Greeley, CO 80631.	July 14, 2016	080266
Florida:					
Broward (FEMA Docket No.: B–1618).	City of Fort Lauderdale (15–04–7586P).	The Honorable John P. Seiler, Mayor, City of Fort Lauderdale, 100 North Andrews Avenue, 8th Floor, Fort Lauderdale, FL 33301.	Building Services Department, 700 Northwest 19th Avenue, Plantation, FL 33311.	July 14, 2016	125105
Broward (FEMA Docket No.: B–1618).	Unincorporated areas of Broward County (15–04–7586P).	Ms. Bertha Henry, Broward County Administrator, 115 South Andrews Avenue, Fort Lauderdale, FL 33301.	Broward County Environmental Licensing and Building Permitting Division, 1 North University Drive, Fort Lauderdale, FL 33311.	July 14, 2016	125093
Bay (FEMA Docket No.: B–1614).	City of Pompano Beach (15–04–9775P).	The Honorable Lamar Fisher, Mayor, City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	Building Inspections Division, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	July 7, 2016	120055
Indian River (FEMA Docket No.: B–1618).	City of Vero Beach (16–04–2464P).	The Honorable Jay Kramer, Mayor, City of Vero Beach, 1053 20th Place, Vero Beach, FL 32960.	City Hall, 1053 20th Place, Vero Beach, FL 32960.	July 26, 2016	120124
Lake (FEMA Docket No.: B–1618).	Unincorporated areas of Lake County (15–04–2425P).	The Honorable Sean Parks, Chairman, Lake County Board of Commissioners, P.O. Box 7800, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	July 25, 2016	120421
Manatee (FEMA Docket No.: B–1614).	Unincorporated areas of Manatee County (16–04–1946X).	The Honorable Vanessa Baugh, Chair, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	July 5, 2016	120153
Miami-Dade (FEMA Docket No.: B–1614).	City of Miami (15–04–9311P).	The Honorable Tomás P. Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Building Department, 444 Southwest 2nd Avenue, 4th Floor, Miami, FL 33130.	July 8, 2016	120650
Miami-Dade (FEMA Docket No.: B–1618).	City of Miami (16–04–1012P).	The Honorable Tomás P. Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Emergency Management Department, 444 Southwest 2nd Avenue, 10th Floor, Miami, FL 33130.	July 29, 2016	120650
Osceola (FEMA Docket No.: B–1618).	City of Kissimmee (14–04–A515P).	The Honorable Jim Swan, Mayor, City of Kissimmee, 101 Church Street, Kissimmee, FL 34741.	Engineering Department, 101 Church Street, Kissimmee, FL 34741.	July 27, 2016	120190
Osceola (FEMA Docket No.: B–1618).	Unincorporated areas of Osceola County (14–04–A515P).	The Honorable Viviana Janer, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	July 27, 2016	120189
St. Lucie (FEMA Docket No.: B–1618).	City of Fort Pierce (16–04–2206P).	The Honorable Linda Hudson, Mayor, City of Fort Pierce, 100 North U.S. Highway 1, Fort Pierce, FL 34950.	Building Department, 100 North U.S. Highway 1, Fort Pierce, FL 34950.	July 26, 2016	120286
St. Lucie (FEMA Docket No.: B–1618).	Unincorporated areas of St. Lucie County (16–04–2206P).	The Honorable Kim Johnson, Chairman, St. Lucie County Board of Commissioners, 2300 Virginia Avenue, Fort Pierce, FL 34982.	St. Lucie County Planning and Development Department, 2300 Virginia Avenue, Fort Pierce, FL 34982.	July 26, 2016	120285
Volusia (FEMA Docket No.: B–1614).	City of Orange City (15–04–9264P).	The Honorable Tom Laputka, Mayor, City of Orange City, 205 East Graves Avenue, Orange City, FL 32763.	City Hall, 205 East Graves Avenue, Orange City, FL 32763.	July 5, 2016	120633
Georgia: Chatham (FEMA Docket No.: B–1618).	City of Pooler (16–04–1717P).	The Honorable Mike Lamb, Mayor, City of Pooler, 100 Southwest Highway 80, Pooler, GA 31322.	Zoning Administration Division, 100 Southwest Highway 80, Pooler, GA 31322.	July 13, 2016	130261
Kentucky:					
Hardin (FEMA Docket No.: B–1618).	City of Elizabethtown (15–04–9058P).	The Honorable Edna Berger, Mayor, City of Elizabethtown, P.O. Box 550, Elizabethtown, KY 42702.	City Hall, 200 West Dixie Avenue, Elizabethtown, KY 42701.	July 19, 2016	210095
Hardin (FEMA Docket No.: B–1618).	Unincorporated areas of Hardin County (15–04–9058P).	The Honorable Harry L. Berry, Hardin County Judge/Executive, P.O. Box 568, Elizabethtown, KY 42702.	Hardin County Planning and Development Commission, 150 North Provident Way, Suite 225, Elizabethtown, KY 42701.	July 19, 2016	210094
Louisiana: East Baton Rouge (FEMA Docket No.: B–1618).	City of Central (15–06–4438P).	The Honorable Jr. Shelton, Mayor, City of Central, 13421 Hooper Road, Suite 9, Central, LA 70818.	Planning and Zoning Commission, 6703 Sullivan Road, Central, LA 70739.	July 15, 2016	220060
Massachusetts:					
Barnstable (FEMA Docket No.: B–1618).	Town of Chatham (16–01–0500P).	The Honorable Jeffrey S. Dykens, Chairman, Town of Chatham Board of Selectmen, 549 Main Street, Chatham, MA 02633.	Community Development Department, 261 George Ryder Road, Chatham, MA 02633.	July 8, 2016	250004

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Barnstable (FEMA Docket No.: B–1618).	Town of Harwich (16–01–0500P).	The Honorable Peter S. Hughes, Chairman, Town of Harwich Board of Selectmen, 732 Main Street, Harwich, MA 02645.	Town Hall, 732 Main Street, Harwich, MA 02645.	July 8, 2016	250008
Mississippi:					
Copiah (FEMA Docket No.: B–1618).	City of Hazlehurst (15–04–7795P).	The Honorable Henry Banks, Mayor, City of Hazlehurst, 209 South Extension Street, Hazlehurst, MS 39083.	City Hall, 209 South Extension Street, Hazlehurst, MS 39083.	July 28, 2016	280046
Copiah (FEMA Docket No.: B–1618).	Unincorporated areas of Copiah County (15–04–7795P).	The Honorable Perry L. Hood, President, Copiah County Board of Supervisors, P.O. Box 551, Hazlehurst, MS 39083.	Copiah County Circuit Clerk's Office, 100 Caldwell Street, Hazlehurst, MS 39083.	July 28, 2016	280221
Montana: Ravalli (FEMA Docket No.: B–1618).	Unincorporated areas of Ravalli County (16–08–0080P).	The Honorable Ray Hawk, Chairman, Ravalli County Board of Commissioners, 215 South 4th Street, Suite A, Hamilton, MT 59840.	Ravalli County Planning Department, 215 South 4th Street, Suite F, Hamilton, MT 59840.	July 28, 2016	300061
New Hampshire: Rockingham (FEMA Docket No.: B–1618).	Town of Windham (15–01–1350P).	The Honorable Joel Desilets, Chairman, Town of Windham Board of Selectmen, 3 North Lowell Road, Windham, NH 03087.	Community Development Department, 3 North Lowell Road, Windham, NH 03087.	July 14, 2016	330144
North Carolina: Burke (FEMA Docket No.: B–1628).	Unincorporated areas of Burke County (15–04–9342P).	The Honorable Wayne F. Abele, Sr, Chairman, Burke County Board of Commissioners, P.O. Box 219, Morganton, NC 28680.	Burke County Community Development Department, 110 North Green Street,, Morganton, NC 28655.	Aug. 1, 2016	370034
Oklahoma: Tulsa (FEMA Docket No.: B–1618).	City of Tulsa (15–06–0681P).	The Honorable Dewey Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, 15th Floor, Tulsa, OK 74103.	Stormwater Design Department, 2317 South Jackson Avenue, Suite 302, Tulsa, OK 74103.	July 19, 2016	405381
Pennsylvania: Delaware (FEMA Docket No.: B–1618).	Borough of Trainer (15–03–2447P).	The Honorable Frances Zalewski, Mayor, Borough of Trainer, 824 Main Street, Trainer, PA 19061.	Borough Hall, 824 Main Street, Trainer, PA 19061.	July 13, 2016	420437
Tennessee:					
Hamblen (FEMA Docket No.: B–1618).	City of Morristown (15–04–7679P).	The Honorable Gary Chesney, Mayor, City of Morristown, 100 West 1st North Street, Morristown, TN 37814.	Community Development and Planning Department, 100 West 1st North Street, Morristown, TN 37814.	July 7, 2016	470070
Sequatchie (FEMA Docket No.: B–1628).	City of Dunlap (16–04–1892P).	The Honorable Dwain Land, Mayor, City of Dunlap, P.O. Box 546, Dunlap, TN 37327.	City Hall, 15595 Rankin Avenue, Dunlap, TN 37327.	July 8, 2016	470270
Texas:					
Bexar (FEMA Docket No.: B–1618).	City of San Antonio (16–06–0036P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	July 11, 2016	480045
Bexar (FEMA Docket No.: B–1618).	City of San Antonio (16–06–0941P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	July 15, 2016	480045
Bexar (FEMA Docket No.: B–1628).	Unincorporated areas of Bexar County (15–06–3161P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	July 22, 2016	480035
Collin (FEMA Docket No.: B–1618).	City of Frisco (15–06–3867P).	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.	July 11, 2016	480134
Collin (FEMA Docket No.: B–1618).	City of McKinney (15–06–3643P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	July 11, 2016	480135
Collin (FEMA Docket No.: B–1618).	City of McKinney (16–06–0893P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	July 11, 2016	480135
Collin (FEMA Docket No.: B–1628).	Town of Westminster (16–06–0644P).	Mr. Phil Goplin, President, Westminster Special Utility District, 409 East Houston Street, Westminster, TX 75485.	Town Hall, 309 West Houston Street, Westminster, TX 75069.	June 17, 2016	480758
Collin (FEMA Docket No.: B–1628).	Unincorporated areas of Collin County (16–06–0644P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	June 17, 2016	480130
Denton (FEMA Docket No.: B–1618).	City of Fort Worth (15–06–1721P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Stormwater Management Division, 1000 Throckmorton Street, Fort Worth, TX 76102.	July 1, 2016	480596
Denton (FEMA Docket No.: B–1618).	Town of Northlake (15–06–1721P).	The Honorable Peter Dewing, Mayor, Town of Northlake, 1400 FM 407, Northlake, TX 76247.	Public Works Department, 1400 FM 407, Northlake, TX 76247.	July 1, 2016	480782

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Denton (FEMA Docket No.: B–1614).	Town of Trophy Club (15–06–3923P).	The Honorable Nick Sanders, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, TX 76262.	Community Development Department, 100 Municipal Drive, Trophy Club, TX 76262.	July 7, 2016	481606
Denton (FEMA Docket No.: B–1618).	Unincorporated areas of Denton County (15–06–1721P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Public Works Engineering Division, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	July 1, 2016	480774
Denton (FEMA Docket No.: B–1614).	Unincorporated areas of Denton County (15–06–3923P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works and Planning Division, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	July 7, 2016	480774
Lamar (FEMA Docket No.: B–1618).	City of Paris (14–06–4102P).	The Honorable AJ Hashmi, Mayor, City of Paris, 135 Southeast 1st Street, Paris, TX 75460.	Engineering, Planning and Development Department, 135 Southeast 1st Street, Paris, TX 75460.	July 11, 2016	480427
Midland (FEMA Docket No.: B–1618).	City of Midland (15–06–4466P).	The Honorable Jerry Morales, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	Engineering Department, 300 North Loraine Street, Midland, TX 79701.	July 20, 2016	480477
Montgomery (FEMA Docket No.: B–1618).	Unincorporated areas of Montgomery County (16–06–0123P).	The Honorable Craig Doyal, Montgomery County Judge, 501 North Thompson, Suite 401, Conroe, TX 77301.	Montgomery County Engineering Department, 501 North Thompson Street, Suite 103, Conroe, TX 77301.	July 14, 2016	480483
Parker (FEMA Docket No.: B–1618).	City of Weatherford (15–06–1755P).	The Honorable Dennis Hooks, Mayor, City of Weatherford, P.O. Box 255, Weatherford, TX 76086.	Department of Code Enforcement, 303 Palo Pinto Street, Weatherford, TX 76086.	July 20, 2016	480522
Travis (FEMA Docket No.: B–1618).	City of Austin (15–06–3816P).	The Honorable Steve Adler, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Engineering Division, 505 Barton Springs Road, 12th Floor, Austin, TX 78767.	July 5, 2016	480624
Travis (FEMA Docket No.: B–1614).	City of Pflugerville (16–06–0047P).	The Honorable Jeff Coleman, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	Development Services Center, 201–B East Pecan Street, Pflugerville, TX 78660.	July 11, 2016	481028
Williamson (FEMA Docket No.: B–1618).	Unincorporated areas of Williamson County (15–06–4383P).	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Department of Infrastructure, 3151 Southeast Inner Loop, Suite B, Georgetown, TX 78626.	July 7, 2016	481079
Utah:					
Utah (FEMA Docket No.: B–1618).	City of Spanish Fork (15–08–0248P).	The Honorable Steve Leifson, Mayor, City of Spanish Fork, 40 South Main Street, Spanish Fork, UT 84660.	Engineering Department, 40 South Main Street, Spanish Fork, UT 84660.	July 8, 2016	490241
Utah (FEMA Docket No.: B–1618).	Unincorporated areas of Utah County (15–08–0248P).	The Honorable Larry Ellertson, Chairman, Utah County Board of Commissioners, 100 East Center Street, Suite 2300, Provo, UT 84606.	Utah County Community Development Department, 51 South University Avenue, Suite 117, Provo, UT 84601.	July 8, 2016	495517
Virginia:					
Fairfax (FEMA Docket No.: B–1614).	Unincorporated areas of Fairfax County (15–03–1061P).	The Honorable Edward L. Long, Jr., Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County Stormwater Planning Division, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	July 1, 2016	515525
York (FEMA Docket No.: B–1614).	Unincorporated areas of York County (16–03–0468P).	The Honorable Jeffrey D. Wassmer, Chairman, York County Board of Supervisors, P.O. Box 532, Yorktown, VA 23690.	York County Stormwater Engineering Division, P.O. Box 532, Yorktown, VA 23690.	July 1, 2016	510182

[FR Doc. 2016–22794 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1645]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 26, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Etowah	City of Gadsden (16–04–2081P).	The Honorable Sherman Guyton, Mayor, City of Gadsden, 90 Broad Street, Gadsden, AL 35902.	City Hall, 90 Broad Street, Gadsden, AL 35902.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2016	010080
Etowah	City of Rainbow City (16–04–2081P).	The Honorable Terry J. Calhoun, Mayor, City of Rainbow City, 3700 Rainbow Drive, Rainbow City, AL 35906.	City Hall, 3700 Rainbow Drive, Rainbow City, AL 35906.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2016	010351
Etowah	Unincorporated areas of Etowah County (16–04–2081P).	The Honorable Lewis Fuller, President, Etowah County Commission, 800 Forrest Avenue, Suite 113, Gadsden, AL 35901.	Etowah County Courthouse, 800 Forrest Avenue, Suite 3, Gadsden, AL 35901.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2016	010077
Jefferson	City of Trussville (15–04–A460P).	The Honorable Eugene Melton, Mayor, City of Trussville, 131 Main Street, Trussville, AL 35173.	City Hall, 131 Main Street, Trussville, AL 35173.	*http://www.msc.fema.gov/lomc*	Sep. 29, 2016	010133
Jefferson	Unincorporated areas of Jefferson County (15–04–A460P).	The Honorable James A. Stephens, Chairman, Jefferson County Commission, 716 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	Jefferson County Land Development Department, 716 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	*http://www.msc.fema.gov/lomc*	Sep. 29, 2016	010217
Mobile	City of Mobile (15–04–A099P).	The Honorable Sandy Stimpson, Mayor, City of Mobile, 205 Government Street, Mobile, AL 36602.	Engineering Department, 205 Government Street, Mobile, AL 36602.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	015007
Shelby	City of Chelsea (16–04–3295P).	The Honorable Samuel E. Niven, Sr., Mayor, City of Chelsea, 11611 Chelsea Road, Chelsea, AL 35043.	City Hall, 11611 Chelsea Road, Chelsea, AL 35043.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	010432

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Shelby	Unincorporated areas of Shelby County (16–04–3295P).	The Honorable Rick Shepherd, Chairman, Shelby County Commission, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineering Department, 506 Highway 70, Columbiana, AL 35051.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	010191
Arkansas:						
Pulaski	City of North Little Rock (16–06–2901X).	The Honorable Joe Smith, Mayor, City of North Little Rock, P.O. Box 5757, North Little Rock, AR 72119.	Planning Department, 500 West 13th Street, North Little Rock, AR 72114.	*http://www.msc.fema.gov/lomc*	Oct. 19, 2016	050182
Pulaski	City of Sherwood (16–06–2901X).	The Honorable Virginia Hillman Young, Mayor, City of Sherwood, P.O. Box 6256, Sherwood, AR 72124.	Engineering, Permit and Planning Department, 2199 East Kiehl Avenue, Sherwood, AR 72124.	*http://www.msc.fema.gov/lomc*	Oct. 19, 2016	050235
Sebastian	City of Fort Smith (15–06–0085P).	Mr. Jeff Dingman, Acting Administrator, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	City Hall, 623 Garrison Avenue, Fort Smith, AR 72901.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2016	055013
Colorado:						
El Paso	City of Colorado Springs (16–08–0119P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	080060
El Paso	Unincorporated areas of El Paso County (16–08–0119P).	The Honorable Darryl Glenn, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	*http://www.msc.fema.gov/lomc*	Oct. 27, 2016	080059
Jefferson	Unincorporated areas of Jefferson County (15–08–0549P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Golden, CO 80419.	*http://www.msc.fema.gov/lomc*	Oct. 7, 2016	080087
Jefferson	Unincorporated areas of Jefferson County (15–08–1142P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Golden, CO 80419.	*http://www.msc.fema.gov/lomc*	Oct. 21, 2016	080087
Connecticut: Middlesex.	Town of Old Saybrook (16–01–0590P).	The Honorable Carl P. Fortuna, Jr., First Selectman, Town of Old Saybrook Board of Selectmen, 302 Main Street, Old Saybrook, CT 06475.	Town Hall, 302 Main Street, Old Saybrook, CT 06475.	*http://www.msc.fema.gov/lomc*	Oct. 7, 2016	090069
Florida:						
Bay	Unincorporated areas of Bay County (15–04–9588P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc*	Oct. 17, 2016	120004
Broward	City of Fort Lauderdale (15–04–3747P).	The Honorable John P. "Jack" Seiler, Mayor, City of Fort Lauderdale, 100 North Andrews Avenue, Fort Lauderdale, FL 33301.	Building Services Division, 700 Northwest 19th Avenue, Fort Lauderdale, FL 33311.	*http://www.msc.fema.gov/lomc*	Oct. 17, 2016	125105
Broward	City of Hallandale Beach (15–04–7116P).	The Honorable Joy F. Cooper, Mayor, City of Hallandale Beach, 400 South Federal Highway, Hallandale Beach, FL 33009.	Development Services Department, 400 South Federal Highway, Hallandale Beach, FL 33009.	*http://www.msc.fema.gov/lom* ..	Nov. 2. 2016	125110
Broward	City of Hollywood (15–04–7116P).	The Honorable Peter Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020.	*http://www.msc.fema.gov/lom* ..	Nov. 2. 2016	125113

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Broward	Unincorporated areas of Broward County (15–04–3747P).	The Honorable Marty Kiar, Mayor, Broward County Board of Commissioners, 115 South Andrews Avenue, Room 417, Fort Lauderdale, FL 33301.	Broward County Environmental Licensing and Building Permitting Division, 1 North University Drive, Plantation, FL 33324.	*http://www.msc.fema.gov/lom* ..	Oct. 17, 2016	125093
Collier	City of Marco Island (16–04–2785P).	The Honorable Bob Brown, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	City Hall, 50 Bald Eagle Drive, Marco Island, FL 34145.	*http://www.msc.fema.gov/lom* ..	Oct. 7, 2016	120426
Escambia	Pensacola Beach–Santa Rosa Island Authority (16–04–4004P).	The Honorable Dave Pavlock, Chairman, Santa Rosa Island Authority Board, P.O. Drawer 1208, Pensacola Beach, FL 32562.	City Hall, 1 Via de Luna, Pensacola Beach, FL 32561.	*http://www.msc.fema.gov/lom* ..	Oct. 25, 2016	125138
Lee	City of Sanibel (15–04–9705P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Building Department, 800 Dunlop Road, Sanibel, FL 33957.	*http://www.msc.fema.gov/lom* ..	Oct. 17, 2016	120402
Pinellas	City of St. Petersburg (16–04–4003P).	The Honorable Rick Kriseman, Mayor, City of St. Petersburg, 175 5th Street North, St. Petersburg, FL 33701.	Municipal Services Center, Permit Division, 1 4th Street North, St. Petersburg, FL 33701.	*http://www.msc.fema.gov/lom* ..	Oct. 25, 2016	125148
Polk	Unincorporated areas of Polk County (16–04–1134P).	The Honorable John E. Hall, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	*http://www.msc.fema.gov/lom* ..	Oct. 27, 2016	120261
Volusia	City of DeBary (16–04–4470P).	The Honorable Clint Johnson, Mayor, City of DeBary, 16 Colomba Road, DeBary, FL 32713.	City Hall, 16 Colomba Road, DeBary, FL 32713.	*http://www.msc.fema.gov/lom* ..	Oct. 5, 2016	130322
Georgia:						
Gwinnett	Unincorporated areas of Gwinnett County (16–04–2468P).	The Honorable Charlotte J. Nash, Chair, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30046.	Gwinnett County Stormwater Management Division, 684 Winder Highway, Lawrenceville, GA 30045.	*http://www.msc.fema.gov/lom* ..	Oct. 11, 2016	130322
Lee	City of Leesburg (16–04–3621P).	The Honorable Jim Quinn, Mayor, City of Leesburg, P.O. Box 890, Leesburg, GA 31763.	City Hall, 107 Walnut Avenue South, Leesburg, GA 31763.	*http://www.msc.fema.gov/lom* ..	Oct. 13, 2016	130348
Lee	Unincorporated areas of Lee County (16–04–3621P).	The Honorable Rick Muggridge, Chairman, Lee County Board of Commissioners, 110 Starksville Avenue North, Leesburg, GA 31763.	Lee County Administration Building, 110 Starksville Avenue North, Leesburg, GA 31763.	*http://www.msc.fema.gov/lom* ..	Oct. 13, 2016	130122
Massachusetts:						
Barnstable	Town of Dennis (16–01–0605P).	The Honorable Paul McCormick, Chairman, Town of Dennis Board of Selectmen, P.O. Box 2060, South Dennis, MA 02660.	Town Hall, 685 Route 134, South Dennis, MA 02660.	*http://www.msc.fema.gov/lom* ..	Sep. 16, 2016	250005
Norfolk	Town of Weymouth (15–01–2574P).	The Honorable Robert L. Hedlund, Mayor, Town of Weymouth, 75 Middle Street, Weymouth, MA 02189.	City Hall, 75 Middle Street, Weymouth, MA 02189.	*http://www.msc.fema.gov/lom* ..	Sep. 29, 2016	250257
Worcester	City of Fitchburg (15–01–2126P).	The Honorable Stephen L. DiNatale, Mayor, City of Fitchburg, 166 Boulder Drive, Suite 108, Fitchburg, MA 01420.	Community Development Department, Planning Division, 301 Broad Street, Fitchburg, MA 01420.	*http://www.msc.fema.gov/lom* ..	Oct. 6, 2016	250304
Worcester	City of Leominster (15–01–2126P).	The Honorable Dean J. Mazzarella, Mayor, City of Leominster, 25 West Street, Leominster, MA 01453.	Office of Emergency Management, 37 Carter Street, Leominster, MA 01453.	*http://www.msc.fema.gov/lom* ..	Oct. 6, 2016	250314

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Montana: Butte-Silver Bow.	Unincorporated areas of Butte-Silver Bow County (15–08–1320P).	The Honorable Matthew Vincent, Chief Executive, Butte-Silver Bow County, 155 West Granite Street, Butte, MT 59701.	Butte-Silver Bow Planning Department, 155 West Granite Street, Butte, MT 59701.	*http://www.msc.fema.gov/lom*	Oct. 25, 2016	300077
North Carolina: Alamance.	City of Burlington (16–04–0421P).	The Honorable Ian Baltutis, Mayor, City of Burlington, P.O. Box 1358, Burlington, NC 27216.	Municipal Building, 425 South Lexington Avenue, Burlington, NC 27215.	*http://www.msc.fema.gov/lom*	Nov. 7. 2016	370002
Rhode Island: Kent	Town of Coventry (16–01–1501P).	Mr. Graham Waters, Manager, Town of Coventry, 1670 Flat River Road, Coventry, RI 02816.	Planning and Zoning Department, 1670 Flat River Road, Coventry, RI 02816.	*http://www.msc.fema.gov/lom*	Oct. 31, 2016	440004
South Carolina: Horry.	City of Myrtle Beach (16–04–2072P).	The Honorable John T. Rhodes, Mayor, City of Myrtle Beach, P.O. Box 2468, Myrtle Beach, SC 29577.	Construction Services Department, 921 North Oak Street, Myrtle Beach, SC 29577.	*http://www.msc.fema.gov/lom*	Sep. 26, 2016	450109
Tennessee: Williamson.	City of Franklin (15–04–8778P).	The Honorable Ken Moore, Mayor, City of Franklin, 109 3rd Avenue South, Franklin, TN 37064.	City Hall, 109 3rd Avenue South, Franklin, TN 37064.	*http://www.msc.fema.gov/lom*	Sep. 30, 2016	470206
Texas:						
Collin	City of Allen (16–06–2118P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	Engineering Department, 305 Century Parkway, Allen, TX 75013.	*http://www.msc.fema.gov/lom*	Nov. 4, 2016	480131
Collin	City of McKinney (16–06–0922P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	City Hall, 221 North Tennessee Street, McKinney, TX 75069.	*http://www.msc.fema.gov/lom*	Oct. 10, 2016	480135
Collin	City of Melissa (16–06–0922P).	Mr. Jason Little, Manager, City of Melissa, 3411 Barker Avenue, Melissa, TX 75454.	City Hall, 3411 Barker Avenue, Melissa, TX 75454.	*http://www.msc.fema.gov/lom*	Oct. 10, 2016	481626
Collin	City of Plano (16–06–0669P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	*http://www.msc.fema.gov/lom*	Oct. 14, 2016	480140
Collin	Unincorporated areas of Collin County (16–06–0922P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*http://www.msc.fema.gov/lom*	Oct. 10, 2016	480130
Dallas	City of Garland (14–06–4283P).	The Honorable Douglas Athas, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	Municipal Building, 800 Main Street, Garland, TX 75040.	*http://www.msc.fema.gov/lom*	Oct. 24, 2016	485471
Dallas	City of Richardson (14–06–4283P).	The Honorable Paul Voelker, Mayor, City of Richardson, P.O. Box 830309, Richardson, TX 75080.	City Hall, 411 West Arapaho Road, Richardson, TX 75080.	*http://www.msc.fema.gov/lom*	Oct. 24, 2016	480184
Dallas	City of Sachse (16–06–0772P).	The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	Public Works Department, 3815–B Sachse Road, Sachse, TX 75048.	*http://www.msc.fema.gov/lom*	Oct. 21, 2016	480186
Fort Bend	Unincorporated areas of Fort Bend County (16–06–1116P).	The Honorable Robert Hebert, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, Richmond, TX 77469.	*http://www.msc.fema.gov/lom*	Oct. 17, 2016	480228
Harris	City of Baytown (16–06–0437P).	The Honorable Stephen DonCarlos, Mayor, City of Baytown, P.O. Box 424, Baytown, TX 77522.	City Hall, 2401 Market Street, Baytown, TX 77520.	*http://www.msc.fema.gov/lom*	Oct. 28, 2016	485456
Harris	City of Houston (16–06–0527P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	*http://www.msc.fema.gov/lom*	Nov. 4, 2016	480296

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Harris	Unincorporated areas of Harris County (16–06–0437P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lom*	Oct. 28, 2016	480287
Harris	Unincorporated areas of Harris County (16–06–0527P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lom*	Nov. 4, 2016	480287
Harris	Unincorporated areas of Harris County (16–06–0557P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lom*	Nov. 4, 2016	480287
Kendall	Unincorporated areas of Kendall County (16–06–0702P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineering Department, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	*http://www.msc.fema.gov/lom*	Oct. 5, 2016	480417
Tarrant	City of Mansfield (16–06–0957P).	The Honorable David L. Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	City Hall, 1200 East Broad Street, Mansfield, TX 76063.	*http://www.msc.fema.gov/lom*	Oct. 20, 2016	480606
Williamson	Unincorporated areas of Williamson County (16–06–0303P).	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 Southeast Inner Loop, Suite B, Georgetown, TX 78626.	*http://www.msc.fema.gov/lom*	Oct. 27, 2016	481079
Wise	City of Boyd (16–06–1325P).	The Honorable Rodney Scroggins, Mayor, City of Boyd, 100 East Rock Island Avenue, Boyd, TX 76023.	City Hall, 100 East Rock Island Avenue, Boyd, TX 76023.	*http://www.msc.fema.gov/lom*	Oct. 27, 2016	480676
Utah:						
Salt Lake	Town of Herriman (16–08–0214P).	The Honorable Carmen Freeman, Mayor, Town of Herriman, 13011 South Pioneer Street, Herriman, UT 84096.	Town Hall, 13011 South Pioneer Street, Herriman, UT 84096.	*http://www.msc.fema.gov/lom*	Oct. 12, 2016	490252
Tooele	City of Tooele (16–08–0138P).	The Honorable Patrick Dunlavy, Mayor, City of Tooele, 90 North Main Street, Tooele, UT 84074.	Town Hall, 90 North Main Street, Tooele, UT 84074.	*http://www.msc.fema.gov/lom*	Sep. 28, 2016	490145
Virginia: Prince William.	Unincorporated areas of Prince William. County (16–03–0170P).	Mr. Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	*http://www.msc.fema.gov/lom*	Oct. 6, 2016	510119
Washington, DC	District of Columbia (15–03–2388P).	The Honorable Muriel Bowser, Mayor, District of Columbia, 1350 Pennsylvania Avenue Northwest, Washington, DC 20004.	Department of Energy and Environmental Services, 1200 1st Street Northeast, Washington, DC 20002.	*http://www.msc.fema.gov/lom*	Sep. 14, 2016	110001
West Virginia:						
Harrison	City of Bridgeport (15–03–0999P).	The Honorable Robert Greer, Mayor, City of Bridgeport, 515 West Main Street, Bridgeport, WV 26330.	Engineering Department, 515 West Main Street, Bridgeport, WV 26330.	*http://www.msc.fema.gov/lom*	Oct. 11, 2016	540055
Harrison	Unincorporated areas of Harrison County (15–03–0999P).	The Honorable Ronald Watson, President, Harrison County Commission, 301 West Main Street, Clarksburg, WV 26301.	Harrison County Planning Department, 301 West Main Street, Clarksburg, WV 26301.	*http://www.msc.fema.gov/lom*	Oct. 11, 2016	540053
Mingo	Town of Matewan (16–03–1666P).	The Honorable Sheila Kessler, Mayor, Town of Matewan, P.O. Box 306, Matewan, WV 25678.	Mingo County Floodplain Coordinator's Office, 78 East 2nd Avenue, Room B200, Williamson, WV 25661.	*http://www.msc.fema.gov/lom*	Oct. 31, 2016	545538

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Mingo	Unincorporated areas of Mingo County (16–03–1666P).	The Honorable John Mark Hubbard, President, Mingo County Commission, 75 East 2nd Avenue, Room 308, Williamson, WV 25661.	Mingo County Floodplain Coordinator's Office, 78 East 2nd Avenue, Room B200, Williamson, WV 25661.	*http://www.msc.fema.gov/lom* ..	Oct. 31, 2016	540133

[FR Doc. 2016–22784 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board (PRB) is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service, Senior Level and Senior Professional positions of the Department.

DATES: This Notice is effective September 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haefeli, Office of the Chief Human Capital Officer, telephone (202) 357–8164.

SUPPLEMENTARY INFORMATION: Each Federal agency is required to establish one or more performance review boards to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Agarwal, Nimisha
Albence, Matthew T.
Allen, Matthew C.
Alles, Randolph D.
Allison, Roderick J.
Anderson, Sandra D.
Asseng Jr., George A.
Awni, Muhammad H.
Ayala, Janice
Bailey, Angela
Baker, Paul E.
Baroukh, Nader
Barrera, Staci A.
Bartlett, Jonathan M.
Benner, Derek N.
Borkowski, Mark S.
Braccio, Dominick D.
Brinsfield, Kathryn
Brothers, L. Reginald
Brown, A Scott
Brown, Dallas C.
Brown, Michael C.
Brunjes, David H.
Bunnell, Steven E.
Caggiano, Marshall L.
Cahill, Donna L.
Callahan, Colleen B.
Callahan, William J.
Carpenter, Dea D.
Carraway, Melvin
Carver, Jonathan Ira
Castro, Raul
Chavez, Richard
Cheng, Wen Ting
Clancy, Joseph P.
Cogswell, Patricia F.
Davis, Diana L.
Davis, Michael P.
DiFalco, Frank
DiPietro, Joseph R.
Dolan, Mark E.
Dougherty, Thomas E.
Dunbar, Susan Cullen
Edge, Peter T.
Edwards, B. Roland
Erichs, Alysa D.
Fallon, William T.
Falk, Scott K.
Fenton, Jennifer M.
Fields, Kathy
Fitzmaurice, Stacey D.
Fleming, Gwen K.
Fluty, Larry
Foucart, Bruce M.
Fujimura, Paul N.
Fulghum , Charles
Gallihugh II, Ronald B.
Gladwell, Angela
Glawe, David J.
Gowadia, Huban
Griffin, Robert
Griggs, Christine
Gunter, Brett A.
Hall, Christopher J.
Harris, Melvin
Havranek, John F.
Healy, Craig C.
Heller, Susan J.
Henderson, Latetia M.
Hess, David
Higgins, Jennifer
Hochman, Kathleen T.
Homan, Thomas
Hutchinson, Kimberly S.
Isbell, Valerie S.
Jacksta, Linda L.
Jaddou, Ur M.
Jenkins, Jr., Kenneth T.
Jeronimo, Jose M.
Johnson, Tae D.
Jones, Franklin C.
Jones, Keith A.
Jones, Sophia D.
Karoly, Stephen J.
Kelly, William G. RDML
Kerner, Francine
Kerns, Kevin
King, Tatum S.
Klein, Matthew
Koumans, Mark R.
Kronisch, Matthew L.
Kruger, Mary
Kubiak, Lev J.
LaJoye, Darby R.
Landfried, Phillip A.
Langlois, Joseph E.
Lanum, Scott F.
Lechleitner, Patrick J.
Lewis, Donald R.
Lowery, III, Edward W.
Luck, Scott A.
Ludtke, Meghan G.
Magaw, Craig D.
Maher, Joseph B.
Manaher, Colleen M.
Marcott, Stacy
Mayenschein, Eddie D.
McAleenan, Kevin K.
McDonald, Christina E.
Mclane, Jo Ann
McShaffrey, Richard S.
Meckley, Tammy M.
Melero, Mariela
Micone, Vincent
Miles, Jere T.
Miller, Philip T.
Mitchell, Ernest
Moore, Joseph D.
Morgan, Mark A.
Moskowitz, Brian M.
Moynihan, Timothy M.
Mulligan, George D.
Mulligan, Scott E.
Nally, Kevin
Neufeld, Donald W.
Newhouse, Victoria E.
O'Connor, Kimberly
Owen, Todd C.
Padilla, Kenneth
Palmer, David J.
Pane, Karen W.
Paramore, Faron K.
Patrick, Connie L.
Patterson, Eric

Pineiro, Marlen
Provost, Carla L.
Ragsdale, Daniel H.
Rahilly, Lyn M.
Raj, Kiran S.
Ramlogan Seuradge, Riah
Rasicot, Gary
Reid, Paula A.
Renaud, Daniel M.
Renaud, Tracy L.
Rice, Stephen
Risley, Lisa
Rittenberg, Scot R.
Robbins, Timothy S.
Roberts, Russell A.
Roger, Debra A.
Rose Jr., Pat A.
Rosenberg, Ronald M.
Ruppel, Joanna
Ryan, Paul
Samaan, Robert
Saunders, Ian C.
Scanlon, Julie A.
Schied, Eugene H.
Scott, Kika Mary
Sevier, Adrian
Shahoulian, David
Shelton Waters, Karen R.
Short, Victoria
Silvers, Robert
Smith, Brenda B.
Sutherland, Daniel W.
Swartz, Neal J.
Sykes, Gwendolyn
Taylor, Francis
Terrell, Joseph P.
Trotta, Nicholas
Ulrich Ii, Dennis A.
Valerio, Tracey A.
Vaughan, Jill A.
Venture, Veronica
Villanueva, Raymond
Vitiello, Ronald D.
Wagner, John P.
Walton, Kimberly H.
Whittenburg, Cynthia F.
Williams, Dwight
Williams, Jaye F.
Windham, Nicole
Young, Edward E.

This notice does not constitute a significant regulatory action under sec. 3(f) of E.O. 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 13, 2016.

Thomas Vieira,

Manager, Executive Resources Policy, Office of the Chief Human Capital Officer.

[FR Doc. 2016–22786 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS 2016–0060]

National Protection and Programs Directorate

AGENCY: Office of Infrastructure Protection, National Protection and Programs Directorate, DHS.

ACTION: Study Participation; notice for voluntary participation regarding Positioning, Navigation, and Timing Study.

SUMMARY: The purpose of this notice is to inform the public that the Departmenet of Homeland Security (DHS) Science and Technology Directorate (S&T) and DHS National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP) are engaging critical infrastructure sector owners and operators in a study to define and validate current and future positioning, navigation, and timing (PNT) requirements for critical infrastructure. This study will be coordinated with the Department of Transportation, which is establishing PNT requirements for the transportation sector. The requirements defined and validated by the study will support key decisions in the development of complementary PNT solution(s).

Accurate PNT is essential for critical infrastructures across the country. Currently, the Global Positioning System (GPS) is the primary source of PNT information. However, GPS signals are susceptible to both unintentional and intentional disruption leaving critical infrastructure vulnerable to operational impacts from disruptions. Due to the essential need for precise timing within many of the critical infrastructure sectors, DHS will initially focus the study on timing requirements within the electricity and wireless communications sectors. Subsequently, DHS will engage additional sectors and expand the study to include positioning and navigation requirements.

FOR FURTHER INFORMATION CONTACT: Organizations or individuals interested in providing PNT requirements or other information pertaining to the study should contact the points of contact below by February 28, 2017: John Dragseth, NPPD, DHS, *John.Dragseth@dhs.gov,* 703–235–9467; or Sarah Mahmood, S&T, DHS, *Sarah.Mahmood@hq.dhs.gov,* 202–254–6721.

Dated: September 15, 2016.

Sarah Ellis Peed,

Director, Strategy, Policy & Budget, Office of Infrastructure Protection.

[FR Doc. 2016–22884 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS—2016—0068]

Agency Information Collection Activities: DHS Civil Rights Compliance Form

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: 60-Day notice and request for comments; New Collection, 1601–NEW.

SUMMARY: The Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until November 21, 2016. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0068, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: dhs.pra@hq.dhs.gov.* Please include docket number DHS–2016–0068 in the subject line of the message.

SUPPLEMENTARY INFORMATION: Recipients of Federal financial assistance from DHS are required to meet certain legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from DHS do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin, disability, age, or sex, in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88–352, 42 U.S.C. 2000d–1 *et seq.,* and the Department's implementing regulation, 6 CFR part 21 and 44 CFR part 7; section 504 of the Rehabilitation Act of 1973 (sec. 504), Public Law 93–112, as amended by Public Law 93–516, 29 U.S.C. 794; title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 *et seq.,* and the

Department's implementing regulations, 6 CFR part 17, and 44 CFR part 19; Age Discrimination Act of 1975, Public Law 94–135, 42 U.S.C. 6101 *et seq.*, and the Department implementing regulation at 44 CFR part 7.

DHS has an obligation to enforce nondiscrimination requirements to ensure that its Federally-assisted programs and activities are administered in a nondiscriminatory manner. In order to carry out its enforcement responsibilities, DHS must obtain a signed assurance of compliance and collect and review information from recipients to ascertain their compliance with applicable requirements. DHS implementing regulations and the Department of Justice (DOJ) regulation Coordination of Non-discrimination in Federally Assisted Program, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406).

DHS has developed the DHS Civil Rights Compliance Form as the primary tool to implement this information collection. The purpose of the information collection is to advise recipients of their civil rights obligation; obtain an assurance of compliance from each recipient, and collect pertinent civil rights information to ascertain if the recipient has in place adequate policies and procedures to achieve compliance, and to determine what, if any, further action may be needed (technical assistance, training, compliance review, etc.) to ensure the recipient is in compliance and will carry out its programs and activities in a nondiscriminatory manner. DHS will make available sample policies and procedures to assist recipients in completing Section 4 of the Form, and providing technical assistance directly to recipients as needed.

DHS will use the DHS Civil Rights Compliance Form to collect civil rights related information from all primary recipients of Federal financial assistance from the Department. Primary recipients are non-federal entities that receive Federal financial assistance in the form of a grant, cooperative agreement, or other type of financial assistance directly from the Department and not through another recipient or "pass-through" entity. This information collection does not apply to sub-recipients, Federal contractors (unless the contract includes the provision of financial assistance), nor the ultimate beneficiaries of services, financial aid, or other benefits from the Department. Recipients will be required to provide the information once every two years, not every time a grant is awarded. Entities whose award does not run a full two years are required to provide the information again if they receive a subsequent award more than two (2) years after the prior award. In responding to Section 4: Required Information, which contains the bulk of the information collection, if the recipient's responses have not changed in the two year period since their initial submission, the recipient does not need to resubmit the information. Instead, the recipient will indicate "no change" for each applicable item. DHS will require recipients to submit their completed forms and supporting information electronically, via email, to the Department, in an effort to minimize administrative burden on the recipient and the Department. DHS anticipates that records or files that will be used to respond to the information collection are already maintained in electronic format by the recipient, so providing the information electronically will further minimize administrative burden. DHS will allow recipients to scan and submit documents that are not already maintained electronically. If the recipient is unable to submit their information electronically, alternative arrangements will be made to submit responses in hard copy.

There are no confidentiality assurances associated with this collection. The system of record notices associated with this information collection are: DHS/ALL–029—Civil Rights and Civil Liberties Records, (July 8, 2010, 75 FR 39266) and DHS/ALL–016—Department of Homeland Security Correspondence Records, (November 10, 2008, 73 FR 66657). The privacy impact assessment associated with this information collection is pending. The DHS Civil Rights Compliance Form is subject to the Privacy Act and will contain a Privacy Act Statement.

This is a new information collection. The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Office for Civil Rights and Civil Liberties, DHS.

Title: Agency Information Collection Activities: DHS Civil Rights Compliance Form.

OMB Number: 1601—NEW.

Frequency: Bi-annually.

Affected Public: Private and Public Sector.

Number of Respondents: 2,220.

Estimated Time per Respondent: 4 hours.

Total Burden Hours: 8,880 hours.

Dated: September 16, 2016.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2016–22782 Filed 9–21–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X.LLWO350000.L14400000.PN0000]

Renewal of Approved Information Collection; OMB Control No. 1004–0009

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information from individuals, private entities, and State or local governments seeking leases, permits, and easements for the use, occupancy, or development of public lands administered by the BLM. The Office of Management and Budget (OMB) has assigned control number 1004–0009 to this information collection.

DATES: Please submit comments on the proposed information collection by November 21, 2016.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004–0009" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Jeff Cartwright, at (202) 912–7336. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Mr. Cartwright.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment — including your personal identifying information — may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

Title: Land Use Application and Permit (43 CFR part 2920)

OMB Control Number: 1004–0009

Summary: Section 302 the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1732) and regulations at 43 CFR part 2920 authorize the issuance of leases, permits, and easements for use, occupancy, or development of public lands administered by the BLM. A variety of land uses are permissible. The burdens to respondents also can vary.

Frequency of Collection: On occasion.

Forms: Form 2920–1, Land Use Application and Permit.

Description of Respondents: Individuals, private entities, and State or local governments seeking leases, permits, and easements for the use, occupancy, or development of public lands.

Estimated Annual Responses: 407.

Estimated Annual Burden Hours: 1,597.

Estimated Annual Non-Hour Costs: $131,760.

The estimated burdens are itemized in the following table:

Type of response A	Number of responses B	Hours per response C	Annual hour burden (column B × column C) D
Land Use Application and Permit, Individuals 43 CFR part 2920 Form 2920–1	66	1	66
Land Use Application and Permit, State and Local Governments 43 CFR part 2920 Form 2920–1	45	1	45
Land Use Application and Permit, Private Sector/Typical 43 CFR part 2920 Form 2920–1	286	1	286
Land Use Application and Permit, Private Sector/Complex 43 CFR part 2920 Form 2920–1	10	120	1,200
Totals	407		1,597

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2016–22806 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X LLAK980600.L1820000.XX0000. LXSIARAC0000]

Notice of Public Meetings, BLM Alaska Resource Advisory Council and Associated Subcommittee

AGENCY: Alaska State Office, Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 as amended (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) and associated placer mining subcommittee will meet as indicated below.

DATES: The RAC will meet October 24–25, 2016, beginning at 1 p.m. on the first day and at 8 a.m. on the second day. The RAC placer mining subcommittee will meet October 24 from 9 a.m.–12 p.m. Both meetings will be held at the BLM Alaska State Office, Denali conference room, located on the fourth floor of the federal courthouse building, at 222 W. 7th Avenue, Anchorage, Alaska. The council will accept comments from the public on October 24 from 4:30 to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: June Lowery, RAC Coordinator, BLM Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513; *jlowery@blm.gov;* 907–271–3130. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, the council will hear the RAC placer mining subcommittee's report and associated recommendations from their July field trip to Chicken, Alaska. The council will also receive updates on current planning efforts and an update on the Regional Mitigation Strategy for the National Petroleum Reserve in Alaska. An agenda will be posted to the BLM Alaska RAC Web site (*www.blm.gov/ak/rac*) by October 14, 2016.

All meetings are open to the public. Depending upon the number of people wishing to comment, time for individual oral comments may be limited. Please be prepared to submit written comments. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: September 14, 2016.

Bud C. Cribley,

State Director.

[FR Doc. 2016–22836 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–OPSM–19986; PPWOCOMPP0, PEA001T01.ZA0000 (166)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Park Service Lost and Found Report

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before October 24, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include "1024-New Form 10–166" in the subject line of your comments. You may review the ICR online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, please contact Frances Hill, Manager, Office of Property Management, National Park Service, 13461 Sunrise Valley Drive, Herndon, VA 20171–3272 (mail); or *frances_hill@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The NPS Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.;* Pub. L. 113–287), requires that the NPS preserve national parks for the enjoyment, education, and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world. Each year, visitors to the various units of the National Park System file reports of lost or found items.

Reporting of lost or found personal property in national parks is governed by 36 CFR 2.22, "Disposition of Property" which requires unattended property be impounded and deemed to be abandoned unless claimed by the owner or an authorized representative within 60 days. The 60-day period commences upon notification to the rightful owner of the property, if the owner can be identified, or from the time the property was placed in the superintendent's custody, if the owner cannot be identified.

Unclaimed property must be stored for a minimum period of 60 days and unless claimed by the owner or an authorized representative, may be claimed by the finder, provided the finder is not an employee of the National Park Service (NPS). Found property not claimed by the owner, an authorized representative of the owner, or the finder, shall be deemed abandoned and disposed of in accordance with Title 41 Code of Federal Regulations.

In order to comply with the requirements of 36 CFR 2.22, the NPS utilizes NPS Form 10–166, "Lost-Found Report" to allow the park to properly identify personal property reported as lost or found and to return found items to the legitimate owner, when possible, or to the finder if the item is not claimed by the owner or their authorized representative. NPS Form 10–166 collects the following information from the visitor filing the report:

- Park name, receiving station (if appropriate), and date item was lost or found;
- Name, address, city, state, zip code, email address, and contact phone numbers (cell and home);
- Type of item, detailed description of item, and location where the item was last seen or found;
- Photograph of item (if available); and

II. Data

OMB Control Number: 1024—New.

Title: National Park Service Lost and Found Report.

Service Form Number(s): Form 10–166.

Type of Request: Existing collection in use without an OMB control number.

Description of Respondents: Visitors of NPS units who file reports of lost or found items.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Activity	Number of responses	Completion time per response (hours)	Total annual burden hours
NPS Form 10–166, "Lost-Found Report"	7,500	5 min	625
Totals	7,500		625

Estimated Annual Nonhour Burden Cost: None.

III. Comments

On June 10, 2015, we published in the **Federal Register** (80 FR 32977) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on August 10, 2015. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 16, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–22805 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–YELL–20564; PPIMYELL1W, PROIESUC1.380000 (166)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on October 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before October 24, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Mail Stop 242), Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please reference OMB Control Number 1024–0266 in the subject line of your comments. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Christina Mills, Outdoor Recreation Planner, Yellowstone National Park, National Park Service, PO Box 168, Yellowstone National Park, WY 82190; (307) 344–2320 (phone); or *christina_mills@nps.gov@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Yellowstone National Park Organic Act (54 U.S.C. 100301–1000302), signed March 1, 1872, established Yellowstone National Park to "dedicate and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people" and "for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition" The Organic Act of 1916 (54 U.S.C. 100101 *et seq.*) authorizes the Secretary of the Interior to develop regulations for national park units under the Department's jurisdiction.

We (NPS) provide opportunities for people to experience Yellowstone in the winter via oversnow vehicles (snowmobiles and snowcoaches, collectively OSVs). Access to most of the park in the winter is limited by distance and the harsh winter environment, which presents challenges to safety and park operations. The park does not provide wintertime OSV tours directly, but currently authorizes OSV tours through concessions contracts (for snowcoach tours) and commercial use authorizations (for snowmobile tours) with area businesses to provide transportation to visitors (Title IV, Section 403 of the National Parks Omnibus Management Act of 1998, Pub. L. 105–391). The park issued 10-year concession contracts for all OSVs starting in December 2014.

OSV use is a form of off-road vehicle use governed by Executive Order 11644 (Use of Off-road Vehicles on Public Lands, as amended by Executive Order 11989). Implementing regulations are published at 36 CFR 2.18, 36 CFR part 13, and 43 CFR part 36. Routes and areas may be designated for OSV use only by special regulation after it has first been determined through park planning to be an appropriate use that will meet the requirements of 36 CFR 2.18 and not otherwise result in unacceptable impacts.

Information collection requirements in this renewal request include:

(1) *Emission and Sound Standards (§ 7.13(l)(4)(vii) and (5)).* Only OSVs that meet NPS emission and sound standards may operate in the park. Before the start of each winter season:

(a) Snowcoach manufacturers or commercial tour operators must demonstrate, by means acceptable to the Superintendent, that their snowcoaches meet the standards.

(b) Snowmobile manufacturers must demonstrate, by means acceptable to the Superintendent, that their snowmobiles meet the standards.

(2) *Transportation Events (§ 7.13(l)(11)(i)–(iii)).* So that we can monitor compliance with the required average and maximum size of transportation events, as of December 15, 2014, each commercial tour operator must:

(a) Maintain accurate and complete records on the number of snowmobiles and snowcoaches he or she brings into the park on a daily basis. These records must be made available for inspection by the park upon request.

(b) Provide a monthly use report on their activities. Form 10–650, "Concessioner Monthly Use Report", available on the park Web site, is used to collect the following information for transportation events:

- Report Month/Year
- Concessioner/Sub Contractor Contract Number
- Departure Date
- Duration of Trip (in days)

- Transportation event type (snowmobile or snowcoach)
- Number of vehicles
- Best Available Technology (BAT) and Enhanced Best Available Technology (E BAT)
- Number of visitors and guides
- Route and primary destination
- Administrative or guest services trip
- If the transportation event allocation was from another commercial tour operator
- Miscellaneous comments
- Transportation event group size (number of guests/guides)

(3) *Enhanced Emission Standards (§ 7.13(l)(11)(iv)).* To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, each commercial tour operator must:

(a) Before the start of each winter season, demonstrate, by means acceptable to the Superintendent, that his or her snowmobiles or snowcoaches meet the enhanced emission standards; and

(b) Maintain separate records for snowmobiles and snowcoaches that meet enhanced emission standards and those that do not.

We will use the information collected to:

- Ensure that OSVs meet NPS emission standards to operate in the park; (2) evaluate commercial tour operators' compliance with allocated transportation events and daily and seasonal OSV group size limits;
- ensure that established daily transportation event limits for the park are not exceeded,
- confirm that commercial tour operators do not run out of authorizations before the end of the season and create a gap when prospective visitors cannot be accommodated, and
- guarantee compliance with applicable laws and regulations.

Responsible commercial tour operators are required to provide this information to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation.

II. Data

OMB Control Number: 1024–0266.

Title: Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park, 36 CFR 7.13(l).

Service Form Number: NPS Form 10–650.

Type of Request: Extension without change of a currently approved collection.

Description of Respondents: Individuals desiring to operate snowcoaches and snowmobiles in Yellowstone National Park.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Completion time per response (hours)	Total annual burden hours
Meet Emission/Sound Standards—Snowcoaches (7.13(l)(4)(vi)	12	.5	6
Meet Emission/Sound Standards—Snowmobiles (7.13(l)(5)	2	.5	1
Report and Recordkeeping (7.13(l)(11)(i)–(iii)) Form 10–650, "Concessioner Monthly Use Report"	45	2	90
Meet Enhanced Emission Standards (7.13(l)(11)(iv))	5	.5	3
Total	64	....	100

Estimated Annual Nonhour Burden Cost: None.

III. Request for Comments

On March 15, 2016, we published in the **Federal Register** (81 FR 13818) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited public comments for 60 days, ending on May 16, 2016. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB or us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 16, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–22800 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2016–0014; OMB Control Number 1014–0011; 16XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Platforms and Structures; Proposed Collection; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under Subpart I, *Platforms and Structures.*

DATES: You must submit comments by November 21, 2016.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically go to *http://www.regulations.gov*. In the Search box, enter BSEE–2016–0014 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014–0011 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart I, *Platforms and Structures.*

OMB Control Number: 1014–0011.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Various applications, reports, and certifications for Platform Verification Program, fixed structure, Caisson/Well Protector, and modification repairs are subject to cost recovery, and BSEE regulations specify service fees for these requests.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250, Subpart I, pertain to Platforms and Structures and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Some responses are mandatory and some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

The BSEE uses the information submitted under Subpart I to determine the structural integrity of all OCS platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

- Review data concerning damage to a platform to assess the adequacy of proposed repairs.
- Review applications for platform construction (construction is divided into three phases–design, fabrication, and installation) to ensure the structural integrity of the platform.
- Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.
- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.
- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

Frequency: On occasion, as a result of situations encountered; and annually.

Description of Respondents: Potential respondents include Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 261,313 hours and $392,874 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart I and related NTLs	Reporting and/or recordkeeping requirement *	Hour burden	Average number of annual reponses	Annual burden hours
		Non-hour cost burdens		
	General Requirements for Platforms			
900(b), (c), (e); 901(b); 905; 906; 910(c), (d); 911(c), (g); 912; 913; 919; NTL(s). [PAP 904–908; PVP 909–918].	Submit application, along with reports/surveys and relevant data, to install new platform or floating production facility or significant changes to approved applications, including but not limited to: Summary of safety factors utilized in design of the platform; use of alternative codes, rules, or standards; CVA changes; and Platform Verification Program (PVP) plan for design, fabrication, and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms and new floating platforms. Consult as required with BSEE and/or USCG. Re/Submit application for major modification(s)/repairs to any platform and obtain approval; and related requirements.	817	100 applications	81,700
		$22,734 × 3 PVP = $68,202		
		$3,256 × 12 fixed structure = $39,072		
		$1,657 × 20 Caisson/Well Protector = $33,140		
		$3,884 × 65 modifications/repairs = $252,460		
900(b)(4)	Submit application for approval to convert an existing platform for a new purpose.	105	4 applications	420
900(b)(5)	Submit application for approval to convert an existing mobile offshore drilling unit (MODU) for a new purpose.	120	2 applications	240
900(c)	Notify BSEE within 24 hours of damage and emergency repairs and request approval of repairs. Submit written completion report within 1 week upon completion of repairs.	7	14 notices/requests; reports.	98
		17		238
900(e)	Submit platform installation date and the final as-built location data to the Regional Supervisor within 45 days after platform installation.	19	140 submittals	2,660
900(e)	Resubmit an application for approval to install a platform if it was not installed within 1 year after approval (or other date specified by BSEE).	58	6 applications	348
901(b)	Request approval for alternative codes, rules, or standards.	Burden covered under 30 CFR 250, Subpart A, 1014–0022		0
903	Record original and relevant material test results of all primary structural materials; retain records during all stages of construction. Compile, retain, and provide location/make available to BSEE for the functional life of platform, the as-built drawings, design assumptions/analyses, summary of nondestructive examination records, inspection results, and records of repair not covered elsewhere.	204	111 lessees	22,644
903(c); 905(k)	Submit certification statement [a certification statement is not considered information collection under 5 CFR 1320.3(h)(1); the burden is for the insertion of the location of the records on the statement and the submittal to BSEE].	This statement is submitted with the application		0
Subtotal			377 responses	108,348
			$392,874 Non-Hour Cost Burdens	

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart I and related NTLs	Reporting and/or recordkeeping requirement *	Hour burden	Average number of annual reponses	Annual burden hours
		Non-hour cost burdens		
Platform Verification Program				
911(c–e); 912(a–c); 914;.	Submit complete schedule of all phases of design, fabrication, and installation with required information; also submit Gantt Chart with required information and required nomination/documentation for CVA, or to be performed by CVA.	173	5 schedules	865
912(a)	Submit design verification plans with your DPP or DOCD..	Burden covered under 30 CFR 550, Subpart B, 1010–0151		0
913(a)	Resubmit a changed design, fabrication, or installation verification plan for approval.	87	2 plans	174
916(c)	Submit interim and final CVA reports and recommendations on design phase.	230	10 reports	2,300
917(a), (c)	Submit interim and final CVA reports and recommendations on fabrication phase, including notices to BSEE and operator/lessee of fabrication procedure changes or design specification modifications.	183	10 reports	1,830
918(c)	Submit interim and final CVA reports and recommendations on installation phase.	133	10 reports	1,330
Subtotal			37 responses	6,499
Inspection, Maintenance, and Assessment of Platforms				
919(a)	Develop in-service inspection plan and keep on file. Submit annual (November 1 of each year) report on inspection of platforms or floating production facilities, including summary of testing results.	171	117 lessees	20,007
919(b) NTL	After an environmental event, submit to Regional Supervisor initial report followed by updates and supporting information.	45 (initial)	150 reports	6,750
		30 (update)	90 reports	2,700
919(c) NTL	Submit results of inspections, description of any damage, assessment of structure to withstand conditions, and remediation plans.	159	200 results	31,800
920(a)	Demonstrate platform is able to withstand environmental loadings for appropriate exposure category.	130	400 occurrences	52,000
920(c)	Submit application and obtain approval from the Regional Supervisor for mitigation actions (includes operational procedures).	153	200 applications	30,600
920(e)	Submit a list of all platforms you operate, and appropriate supporting data, every 5 years or as directed by the Regional Supervisor.	94	112 operators/5 years = 23 lists per year.	2,162
920(f)	Obtain approval from the Regional Supervisor for any change in the platform.	64	2 approvals	128
Subtotal			1,182 responses	146,147
General Departure				
900 thru 921	General departure and alternative compliance requests not specifically covered elsewhere in Subpart I regulations.	29	11 requests	319
Subtotal			11 responses	319

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart I and related NTLs	Reporting and/or recordkeeping requirement *	Hour burden	Average number of annual reponses	Annual burden hours
		Non-hour cost burdens		
Total Burden.	....	....	1,607 Responses	261,313
			$392,874 Non-Hour Cost Burdens	

* In the future, BSEE will be allowing the option of electronic reporting for certain requirements.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified four non-hour cost burdens, which are service fees required to recover the Federal Government's processing costs of certain submissions for various platform applications/installations. The platform fees are as follows: $22,734 for installation under the Platform Verification Program; $3,256 for installation of fixed structures under the Platform Approval Program; $1,657 for installation of Caisson/Well Protectors; and $3,884 for modifications and/or repairs (see § 250.125). We have not identified any other non-hour cost burdens associated with this collection of information, and we estimate a total reporting non-hour cost burden of $392,874.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other non-hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Nicole Mason, (703) 787–1607.

Dated: September 16, 2016.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–22829 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE–2016–0012; OMB Number 1014–0025; 16XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Application for Permit Drill (APD, Revised APD), Supplemental APD Information Sheet, and All Supporting Documentation; Proposed Collection; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under 30 CFR 250 where it pertains to an Application for Permit Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation.

DATES: You must submit comments by November 21, 2016.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2016–0012 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014–0025 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation.

Form(s): BSEE–0123 and –0123S.

OMB Control Number: 1014–0025.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Applications for permits to drill and modification approvals are subject to cost recovery, and BSEE regulations specify service fees for these requests.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250 stipulate the various requirements that must be submitted with forms BSEE–0123 (Application for Permit to Drill) and BSEE–0123S (Supplemental APD Information Sheet), and the numerous submittals included with them; and are the subject of this collection.

This request also covers related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Some responses are mandatory and some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

BSEE uses the information to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

Also, we use the information to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, cementing programs, and blowout preventer (BOP) systems to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. The BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information.

The information on the forms is as follows:

BSEE–0123

Heading: BSEE uses the information to identify the type of proposed drilling activity for which approval is requested.

Well at Total Depth/Surface: Information utilized to identify the location (area, block, lease, latitude and longitude) of the proposed drilling activity.

Significant Markers Anticipated: Identification of significant geologic formations, structures and/or horizons that the lessee or operator expects to encounter. This information, in conjunction with seismic data, is needed to correlate with other wells drilled in the area to assess the risks and hazards inherent in drilling operations.

Question/Information: The information is used to ascertain the adequacy of the drilling fluids (mud) program to ensure control of the well, the adequacy of the surface casing compliance with EPA offshore pollutant discharge requirements, and the shut-in of adjacent wells to ensure safety while moving a rig on and off a drilling location; as well as ensure the worst case discharge scenario information reflects the well and is updated if applicable. This information is also provided in the course of electronically requesting approval of drilling operations via eWell.

BSEE–0123S

Heading: BSEE uses this information to identify the lease operator, rig name, rig elevation, water depth, type well (exploratory, development), and the presence of H2S and other data which is needed to assess operational risks and safety.

Well Design Information: This engineering data identifies casing size, pressure rating, setting depth and current volume, hole size, mud weight, blowout preventer (BOP) and well bore designs, formation and BOP test data and other criteria. The information is utilized by BSEE engineers to verify operational safety and ensure well control to prevent blowouts and other hazards to personnel and the environment. This form accommodates requested data collection for successive sections of the borehole as drilling proceeds toward total depth below each intermediate casing point.

Frequency: On occasion and as required by regulations.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 47,800 hours and $862,104 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

[**NOTE:** In the burden table, a revised APD hour burden is preceded by the letter R]

Citation 30 CFR 250; application for permit to drill (APD)	Reporting or recordkeeping requirement	Hour burden	Average number of responses	Annual burden hours (rounded)
		Non-hour cost burden		
Subparts A, D, E, H, P.	Apply for permit to drill, sidetrack, bypass, or deepen a well submitted via Forms BSEE–0123 (APD) and BSEE–0123S (Supplemental APD). (This burden represents only the filling out of the forms, the requirements are listed separately below).	1	408 applications	408
		$2,113 fee × 408 = $862,104		
Subparts D and E	Obtain approval to revise your drilling plan or change major drilling equipment by submitting a Revised APD and Supplemental APD [no cost recovery fee for Revised APDs]. (This burden represents only the filling out of the forms, the requirements are listed separately below).	1	662 submittals	662
Subtotal			1,070 responses	1,070
			$862,104 non-hour cost burdens	
	Subpart A			
125	Submit evidence of your fee for services receipt	Exempt under 5 CFR 1320.3(h)(1)		0
197	Written confidentiality agreement	Exempt under 5 CFR 1320.5(d)(2)		0
	Subpart D			
409	Request departure approval from the drilling requirements specified in this subpart; identify and discuss.	1	367 approvals	367
410(d)	Submit to the District Manager: An original and two complete copies of APD and Supplemental APD; separate public information copy of forms per § 250.186.	0.5 R–0.5	380 submittals 380 submittals	190 190
411; 412	Submit plat showing location of the proposed well and all the plat requirements associated with this section.	2	380 submittals	760
411; 413; 414; 415	Submit design criteria used and all description requirements; drilling prognosis with description of the procedures you will follow; and casing and cementing program requirements.	11.5	707 submittals	8,131
411; 416	Submit diverter and BOP systems descriptions and all the regulatory requirements associated with this section.	3	380 submittals	1,140
411; 417	Provide information for using a MODU and all the regulatory requirements associated with this section.	10	682 submittals	6,820
411; 418	Additional information required when providing an APD include, but not limited to, rated capacities of drilling rig and equipment if not already on file; quantities of fluids, including weight materials; directional plot; H2S; welding plan; and information we may require per requirements, etc.	19	380 submittals	7,220
420(a)(6)	(i) Include signed registered professional engineer certification and related information.	3	1,034 certification	3,102
423(b)(3)	Submit for approval casing pressure test procedures and criteria. On casing seal assembly ensure proper installation of casing or line (subsea BOP's only).	3	527 procedures & criteria.	1,581

Citation 30 CFR 250; application for permit to drill (APD)	Reporting or recordkeeping requirement	Hour burden	Average number of responses	Annual burden hours (rounded)
		Non-hour cost burden		
423(c)(3)	Submit test procedures and criteria for a successful negative pressure test for approval. If any change, submit changes for approval.	2.5 R–4	355 submittals 1 change	888 4
432	Request departure from diverter requirements; with discussion and receive approval.	5	53 requests	265
447(c)	Indicate which casing strings and liners meet the criteria of this section.	1	355 casing/liner info	355
448(b)	Request approval of test pressures (RAM BOPs)	2	353 requests	706
448(c)	Request approval of pressure test (annular BOPs)	1	380 requests	380
449(j)	Submit test procedures, including how you will test each ROV intervention function, for approval (subsea BOPs only).	2	507 submittals	1,014
449(k)	You must submit test procedures (autoshear and deadman systems) for approval. Include documentation of the controls/circuitry system used for each test; describe how the ROV will be utilized during this operation.	2.5	507 submittals	1,268
456(j)	Request approval to displace kill-weight fluid; include reasons why along with step-by-step procedures.	4.5	518 approval requests	2,331
460(a)	Include your projected plans if well testing along with the required information.	12	2 plans	24
490(c)(2 thru 4)	(2) Request to classify an area for the presence of H2S (3) Support request with available information such as G&G data, well logs, formation tests, cores and analysis of formation fluids. (4) Submit a request for reclassification of a zone when a different classification is needed.	3 3 1	91 requests 73 submittals 4 requests	273 219 4
Alaska Region: 410; 412 thru 418; 420; 442; 444; 449; 456.	Due to the difficulties of drilling in Alaska, along with the shortened time window allowed for drilling, Alaska hours are done here as stand alone requirement. Also, note that these specific hours are based on the first APD in Alaska in more than 10 years.	2,800	1 request	2,800
Subpart D subtotal.			8,417 responses	40,032
		Subpart E		
513	(a) Obtain approval to begin well completion operations. If completion is planned and the data are available you may submit on forms. (b) Submit description of well-completion, schematics, logs, any H2S; on form.	3 R–6 16.5 R–26	288 requests 1 request 295 submittals 1 submittal	864 6 4,868 26
516(a)	Submit well-control procedure indicating how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.	3	295 procedures	885
Subpart E subtotal.			880 responses	6,649
		Subpart H		
807(a)	Submit detailed information that demonstrates the SSSVs and related equipment are capable of performing in HPHT.	3.75	1 submittal	4
Subpart H subtotal.			1 response	4

Citation 30 CFR 250; application for permit to drill (APD)	Reporting or recordkeeping requirement	Hour burden	Average number of responses	Annual burden hours (rounded)
		Non-hour cost burden		
	Subpart P			
Note that for Sulphur Operations, while there may be 45 burden hours listed, we have not had any sulphur leases for numerous years, therefore, we have submitted minimal burden.				
1605(b)(3)	Submit information on the fitness of the drilling unit	4	1 submittal	4
1617	(a) Request approval before drilling a well	1	1 submittal	1
	(b) Include rated capacities of the proposed drilling unit and of major drilling equipment.	3	1 submittal	3
	(c) Include a fully completed Form BSEE–0123 and the requirements of this section.	34	1 submittal	34
1622(b)	Submit description of well-completion or workover procedures, schematic, and if H2S is present.	3	1 submittal	3
Subpart P subtotal.			5 responses	45
Total Burden.			10,373 responses	47,800
			$862,104 non-hour cost burden	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden associated with the collection of information for a total of $862,104. There is a service fee of $2,113 required to recover the Federal Government's processing costs of the APD. We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other non-hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Nicole Mason, (703) 787–1607.

Dated: September 16, 2016.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–22844 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE–2016–0015; OMB Number 1014–0012; 16XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the Outer Continental Shelf Lands Act; Proposed Collection; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under 30 CFR 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

DATES: You must submit comments by November 21, 2016.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2016–0015 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014–0012 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the Outer Continental Shelf Lands Act.*

OMB Control Number: 1014–0012.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA requires open and nondiscriminatory access to oil and gas pipelines; as well as provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. These regulations provide a mechanism for entities who believe they have been denied open and nondiscriminatory access to pipelines on the OCS. The BSEE established a process, via the subject regulations, to submit complaints alleging denial of access or discriminatory access for a shipper transporting oil or gas production from Federal leases on the OCS. The complaint should include certain minimal data in order for BSEE to begin an investigation. Upon completion of an investigation, BSEE will propose a remedial action.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Regulations at §§ 291.106(b) and 291.108 require a nonrefundable processing fee of $7,500 that a shipper must pay when filing a complaint to BSEE.

The responses are voluntary and some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

The BSEE uses the submitted information to initiate a more detailed investigation into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. The BSEE may request additional information upon completion of the initial investigation.

Frequency: On occasion.

Description of Respondents: Potential respondents include Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 51 hours and $7,500 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 291	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
		Non-hour cost burden		
105, 106, 108, 109, 111	Submit complaint (with fee) to BSEE and affected parties. Request confidential treatment and respond to BSEE decision.	50	1	50
		$7,500 fee × 1 = $7,500		
106(b), 109	Request waiver or reduction of fee	1	1	1
104(b), 107, 111 110 114, 115(a)	Submit response to a complaint. Request confidential treatment and respond to BSEE decision. Submit required information for BSEE to make a decision Submit appeal on BSEE final decision	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4(a)(2), (c)).		0
Total Burden			2	51
			$7,500 Non-Hour Cost Burden	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden of $7,500. The BSEE requires that shippers pay a nonrefundable fee of $7,500 for a complaint submitted to BSEE (30 CFR 291.106). The fee is required to recover the Federal Government's processing costs.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other non-hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Nicole Mason, (703) 787–1607.

Dated: September 16, 2016.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–22842 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE–2016–0013; OMB Control Number 1014–0026; 16XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Application for Permit To Modify (APM) and Supporting Documentation; Proposed Collection; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under 30 CFR 250 where it pertains to an Application for Permit to Modify (APM) and all supporting documentation.

DATES: You must submit comments by November 21, 2016.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2016–0013 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014–0026 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Application for Permit to Modify (APM) and all supporting documentation.

Form(s): BSEE–0124.

OMB Control Number: 1014–0026.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. APMs are subject to cost recovery and BSEE regulations specify a service fee for this request.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250 stipulate the various requirements that must be submitted with a Form BSEE–0124 (APM). The form and the numerous submittals that are included and/or attached to the form are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations

Some responses are mandatory and some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2); 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

The BSEE uses the information to ensure safe well completion, workover, and decommissioning operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The well completion, workover, and decommissioning unit is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each well completion, workover, and decommissioning crew is properly trained and able to promptly perform well-control activities at any time during well operations; and compliance with safety standards. The current regulations provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

We use the information to determine the conditions of the site to avoid hazards inherent in well completions, workovers, and decommissioning operations. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information that is submitted.

The information on the APM form (BSEE–0124) is used to evaluate and approve the adequacy of the equipment, materials, and/or procedures that the lessee or operator plans to use during drilling plan modifications, changes in major drilling equipment, and plugging back. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information submitted on BSEE–0124. The information on the form is as follows:

Heading: Identify the well name, lease operator, type of revision and timing of the proposed modifications.

Well at Total Depth/Surface: Identify the unique location (area, block and lease of the proposed activity).

Proposed or Completed Work: Information identifying the specific activity, revision or modification for which approval is requested. This includes specific identification of equipment, engineering, and pressure test data needed by BSEE to ascertain that operations will be conducted in a manner that ensures the safety of personnel and protection of the environment.

Question Information: Responses to questions serve to ascertain compliance with applicable BSEE regulations and requirements and adherence to good operating practices.

Frequency: On occasion and as required by regulations.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 9,770 hours and $361,625 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
		Non-hour cost burdens		
Subparts D, E, F, H, P, Q	Submit APM plans (BSEE–0124). (This burden represents only the filling out of the form, the requirements are listed separately below).	1 hour	2,893 applications	2,893
		2,893 applications × $125 application fee = $361,625.		
Subparts D, E, F, H, P, Q	Submit Revised APM plans (BSEE–0124). (This burden represents only the filling out of the form, the requirements are listed separately below) [no fee charged].	1 hour	1,551 applications	1,551
Subtotal			4,444 responses	4,444
			$361,625 non-hour cost burdens.	

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
		Non-hour cost burdens		
	Subpart A			
125	Submit evidence of your fee for services receipt	Exempt under 5 CFR 1320.3(h)(1)		0
197	Written confidentiality agreement	Exempt under 5 CFR 1320.5(d)(2)		0
	Subpart D			
423(c)(3); 449(j); 449(k); 460(a); 465.	There are some regulatory requirements that give respondents the option of submitting with their APD or APM; industry advised us that when it comes to this particular subpart, they submit a Revised APD. There are no APM submittals under this subpart.	Burden covered under 30 CFR 250, Subpart D—1014–0018.		0
	Subpart E			
513(a)	Obtain written approval for well-completion operations. Submit the following information, which includes but not limited to: Request approval for the completion or if the completion objective or plans have changed; description of the well-completion procedures; statement of the expected surface pressure, and type and weight of completion fluids; schematic drawing; a partial electric log; H2S presence or if unknown.	1 hour	181 submittals	181
514(d)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: Number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	40 mins	175 submittals	117
515	(a thru c) For completion operations, include the following BOP descriptions: Components, pressure ratings and test pressures; schematic; independent third-party verification and supporting documentation about blind-shear rams. (d) When you use a subsea BOP stack, submit independent third-party verification about BOP stack requirements. (e)(1), (2) Independent third-party qualifications and evidence/supporting documentation demonstrating their abilities.	30 mins 15 mins 20 mins	181 submittals 17 submittals 192 submittals	91 4 64
516(a)	Submit a well-control procedure that indicates how the annular preventer will be utilized, and the pressure limitations that will be applied during each mode of pressure control.	15 mins	181 submittals	45
517(d)	(8) Submit for approval test procedures, including how you will test each ROV function. (9)(i) Submit for approval test [autoshear and deadman] procedures. Include all required documentation.	20 mins 15 mins	17 submittals 17 submittals	6 4
526(a)	Submit a notification of corrective action of the diagnostic test.	15 mins	68 notifications	17
Subtotal of Subpart E			1,046 responses	529
	Subpart F			
613	(a), (b) Request approval to begin other than normal workover, which includes description of procedures, changes in equipment, schematic, info about H2S, etc.	30 mins	802 requests	401

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
		Non-hour cost burdens		
	(c) If completing to a new zone, submit reason for abandonment and statement of anticipated pressure data for new zone.	10 mins	205 submittals	34
	(d) Within 30 days after completing the well-workover operation, except routine operations, submit showing the work as performed.	15 mins	762 submittals	191
614(d)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: Number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	40 mins	51 requests	34
615	(a thru c) For workover operations, include the following BOP descriptions with your submittal: Components, pressure ratings and test pressures; schematic; independent third-party verification and supporting documentation about blind-shear rams.	30 mins	629 submittals	315
	(d) When you use a subsea BOP stack, independent third-party verification about BOP stack requirements.	15 mins	51 verifications	13
	(e)(1), (2) Independent third-party qualifications and evidence/supporting documentation demonstrating their abilities.	20 mins	576 submittals	192
616(a)	Submit well-workover procedures how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.	20 mins	629 procedures	210
616(f)(4)	Obtain approval to conduct operations without downhole check valves, describe alternate procedures and equipment to conduct operations without downhole check valves.	15 mins	273 approvals	68
617(d), (h)(1+2)	Obtain approval: Stump test and include procedures; test procedures, including how you will test each ROV function and autoshear deadman; include required documentation; and utilization description.	40 mins	51 approvals	34
Subtotal of Subpart F			4,029 responses	1,492
		Subpart H		
801(h)	Request approval to temporarily remove safety device for non-routine operations.	10 mins	55 approvals	9
807(a)	Submit detailed information that demonstrates the SSSVs and related equipment capabilities re HPHT; include discussions of design verification analysis and validation, functional listing process, and procedures used; explain fit-for-service.	40 mins	15 submittals	10
Subtotal of Subpart H			70 responses	19
		Subpart P		

It needs to be noted that for Sulphur Operations, while there may be burden hours listed that are associated with some form of an APM submittal, we have not had any sulphur leases for numerous years, therefore, we are submitting minimal burden.

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
			Non-hour cost burdens	
1618(a), (b)	Request approval/submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities; include but not limited to, detailed statement of proposed work changed; present state of well; after completion, a detailed report of all the work done and results.	30 mins	1 plan	1
1619(b)	Submit duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition.	10 mins	1 submittal	1
1622(a), (b)	Obtain written approval to begin operations; include description of procedures followed; changes to existing equipment, schematic drawing; zones info re H2S, etc.	20 mins	1 approval	1
1622(c)	(2) Submit results of any well tests and a new schematic of the well if any subsurface equipment has been changed.	10 mins	1 submittal	1
Subtotal of Subpart P			4 responses	4
		Subpart Q		
1706(a)	Request approval of well abandonment operations	20 mins	710 requests	237
1706(f)	(4) Request approval to conduct operations without downhole check valves, describe alternate procedures and equipment.	15 mins	500 requests	125
1707(d)	Submit and obtain approval of plan describing the stump test procedures.	10 mins	50 submittals	8
1707(h)	(1) Submit test procedures, including how you will test each ROV function for approval; include documentation and utilization description.	30 mins	50 submittals	25
1709	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: Number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	30 mins	50 submittals	25
1712; 1704(g)	(a), (b), (d), (f)(9 + 11), (g) Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to, reason plugging well, with relevant information; well test and pressure data; type and weight of well control fluid; a schematic listing mud and cement properties; plus testing plans. Submit Certification by a Registered Professional Engineer of the well abandonment design and procedures; certify the design.	40 mins	244 certifications	163
	(c), (e), (f) Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to max surface pressure and determination; description of work; well depth, perforated intervals; casing and tubing depths/details, plus locations, types, lengths, etc.	1.5 hours	444 submittals	666
1717; 1704(g)	Submit with a final well schematic, description, nature and quantities of material used; relating to casing string—description of methods used, size and amount of casing and depth.	1 hour	434 submittals	434

Citation 30 CFR 250 APM's	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours (rounded)
		Non-hour cost burdens		
1721(a), (g), (h); 1704(g) ..	Submit the applicable information required to temporarily abandon a well for approval; after temporarily plugging a well, submit well schematic, description of remaining subsea wellheads, casing stubs, mudline suspension equipment and required information of this section; submit certification by a Registered Professional Engineer of the well abandonment design and procedures; certify design.	70 mins	1,296 submittals	1,512
1722(a), (d); 1704(g)	Request approval to install a subsea protective device.	30 mins	15 requests/submittals	8
	Submit a report including dates of trawling test and vessel used; plat showing trawl lines; description of operation and nets used; seafloor penetration depth; summary of results listed in this section; letter signed by witness of test.	1.5 hours	....	23
1723(b); 1704(g)	Submit a request to perform work to remove casing stub, mudline equipment, and/or subsea protective covering.	20 mins	150 requests	50
1743(a); 1704(g)	Submit signed certification; date of verification work and vessel; area surveyed; method used; results of survey including debris or statement that no objects were recover; a post-trawling plot or map showing area.	1.25 hours	5 certifications	6
Subtotal of Subpart Q	....	....	3,948 responses	3,282
Total Burden	....	....	13,524 responses	9,770
			$361,625 non-hour cost burdens.	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden associated with the collection of information for a total of $361,625. The service fee of $125 is required to recover the Federal Government's processing costs of the APM. We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other non-hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Nicole Mason, (703) 787–1607.

Dated: September 16, 2016.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–22845 Filed 9–21–16; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1022]

Certain Sleep-Disordered Breathing Treatment Mask Systems and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 17, 2016, under section 337 of the Tariff Act of 1930, as amended, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Australia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sleep-disordered breathing treatment mask systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,960,196 ("the '196 patent") and U.S. Patent No. 9,119,931 ("the '931 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 16, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain sleep-disordered breathing treatment mask systems and components thereof by reason of infringement of one or more of claims 23–86 of the '196 patent and claims 1, 5–8, 11–14, 18–22, 25, 26, 28–31, 33–37, 40, 41, 43, 46, 48, 49, 51, 53–55, 57, 58, 60–65, 69–71, 77, and 78 of the '931 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

ResMed Corp., 9001 Spectrum Center Drive, San Diego, CA 92123.
ResMed Inc., 9001 Spectrum Center Drive, San Diego, CA 92123.
ResMed Ltd., 1 Elizabeth Macarthur Drive, Bella Vista NSW 2153, Australia.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fisher & Paykel Healthcare Limited, 15 Maurice Paykel Place, East Tamaki, Auckland 2013, P.O. Box 14 348, Panmure, Auckland 1741, New Zealand.
Fisher & Paykel Healthcare, Inc., 173 Technology Drive, Suite 100, Irvine, CA 92618.
Fisher & Paykel Healthcare Distribution Inc., 173 Technology Drive, Suite 100, Irvine, CA 92618.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 19, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22865 Filed 9–21–16; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA); *Notice:* (16–067).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of

Management and Budget, 725 7th Street NW., Washington, DC 20543. Attention: Desk Officer for NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports the National Aeronautics and Space Act of 1958, as amended, to create opportunities to improve processes associated with the evaluation and selection of individuals to participate in the NASA Astronaut Candidate Selection Program. The NASA Astronaut Selection Office (ASO) located at the Lyndon B. Johnson Space Center (JSC) in Houston, Texas is responsible for selecting astronauts for the various United States Space Exploration programs. In evaluating an applicant for the Astronaut Candidate Program, it is important that the ASO have the benefit of qualitative and quantitative information and recommendations from persons who have been directly associated with the applicant over the course of their career.

This information will be used by the NASA ASO and Human Resources (HR) personnel, during the candidate selection process (approx. 2 year duration), to gain insight into the candidates' work ethic and professionalism as demonstrated in previous related employment activities. Respondents may include the astronaut candidate's previous employer(s)/direct-reporting manager, as well as co-workers and other references provided by the candidate.

II. Method of Collection

Electronic and optionally by paper.

III. Data

Title: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry.

OMB Number: 2700–0156.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 2,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 667.

Estimated Total Annual Cost: $50,905.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,
NASA PRA Clearance Officer.

[FR Doc. 2016–22824 Filed 9–21–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0062]

Information Collection: NRC Form 327, "Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report," and NUREG/BR–0096, "Instructions and Guidance for Completing Physical Inventory"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget's (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 327, "Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report;" and NUREG/BR–0096, "Instructions and Guidance for Completing Physical Inventory."

DATES: Submit comments by November 21, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0062. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0062 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0062. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0062 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information with a link to the related instructions may be obtained without charge by accessing ADAMS Accession No. ML16166A066. The supporting statement is available in ADAMS under Accession No. ML16166A088.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2016–0062 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 327, "Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report;" and NUREG/BR–0096, "Instructions and Guidance for Completing Physical Inventory."
2. *OMB approval number:* 3150–0139.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 327.
5. *How often the collection is required or requested:* Certain licensees possessing strategic SNM are required to report inventories every 6 months. Licensees possessing SNM of moderate strategic significance must report every 9 months. Licensees possessing SNM of low strategic significance must report annually, except one licensee must report its dynamic inventories every 2 months and a static inventory on an annual basis.
6. *Who will be required or asked to respond:* Fuel facility licensees possessing special nuclear material, *i.e.,* enriched uranium, plutonium or U–233.
7. *The estimated number of annual responses:* 26.
8. *The estimated number of annual respondents:* 6.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 104 hours (4 hours per response × 26 responses).
10. *Abstract:* NRC Form 327 is submitted by certain fuel facility licensees to account for special nuclear material. The data is used by the NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) SNM theft or diversion. The NUREG/BR–0096 provides guidance and instructions for completing the form in accordance with the requirements appropriate for a particular licensee.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 16th day of September, 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–22827 Filed 9–21–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–288 and CP2016–54]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 26, 2016 (Comment due date applies to all Docket Nos. listed above)

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39

U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–288; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* September 16, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 26, 2016.

2. *Docket No(s).:* CP2016–54; *Filing Title:* Notice of the United States Postal Service of Filing Modification to Global Expedited Package Services 3 Negotiated Service Agreement; *Filing Acceptance Date:* September 16, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* September 26, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–22867 Filed 9–21–16; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Clarifying Current Roles and Responsibilities Described in the Coordinated Framework for the Regulation of Biotechnology

AGENCY: National Science and Technology Council, Office of Science and Technology Policy.

ACTION: Notice of Request for Public Comment.

SUMMARY: The purpose of this Notice of Request for Public Comment is to solicit relevant comments that can assist in the finalization of the proposed update to the Coordinated Framework for the Regulation of Biotechnology (Coordinated Framework) to clarify the current roles and responsibilities of the EPA, FDA, and USDA consistent with the objectives described in the July 2, 2015 Memorandum issued by the Executive Office of the President.

DATES: Responses must be received by November 1, 2016 at 5:00 p.m. EDT to be considered.

ADDRESSES: You may submit information by either of the following methods (electronic is strongly preferred):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Docket No. FDA–2015–N–3403. Follow the instructions for submitting information. Information submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged.
- *Mail:* National Science and Technology Council: Emerging Technologies Interagency Policy Coordination Committee, Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC 20504. If submitting a response by mail, please allow sufficient time for mail processing. Written/paper information, including attachments, will be posted to the docket unchanged. Responses must be received by the deadline to be considered.

Instructions: All submissions received must include Docket No. FDA–2015–N–3403 for Clarifying Current Roles and Responsibilities Described in the Coordinated Framework for the Regulation of Biotechnology; Request for Public Comment.

Disclaimer: All information received will be placed in the docket and will be publicly viewable at *http://www.regulations.gov.* Responses must be unclassified and should not contain any information that might be considered proprietary, confidential, or personally identifying (such as home address or social security number).

Responses to this Request for Public Comment will not be returned. The National Science and Technology Council is under no obligation to acknowledge receipt of the information received. No requests for a bid package or solicitation will be accepted; no bid package or solicitation exists. This Request for Public Comment is issued solely for information purposes and does not constitute a solicitation.

FOR FURTHER INFORMATION CONTACT: National Science and Technology Council: Emerging Technologies Interagency Policy Coordination Committee, Office of Science and Technology Policy, Executive Office of the President, Eisenhower Executive Office Building, 1650 Pennsylvania Ave., Washington DC 20504, Phone: 202–456–4444; Melissa M. Goldstein, *Science@ostp.eop.gov;* Online: *https://www.whitehouse.gov/webform/contact-emerging-technologies-interagency-policy-coordinating-committee-national-science-and.*

SUPPLEMENTARY INFORMATION:

Background Information

While the current Federal regulatory system for biotechnology products effectively protects health and the environment, advances in science and technology have altered the product landscape in recent years. In addition, the complexity of the current regulatory system can make it difficult for the public to understand how the safety of biotechnology products is evaluated and create challenges for small and mid-sized businesses navigating the regulatory process for these products.

To address these challenges, on July 2, 2015, the Executive Office of the President (EOP) issued a memorandum (July 2015 EOP Memorandum, Ref. 1) directing the primary agencies that regulate the products of biotechnology—the U.S. Environmental Protection Agency (EPA), the U.S. Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA)—to accomplish three tasks: (1) Update the Coordinated Framework for the Regulation of Biotechnology (51 FR 23302; June 26, 1986) (Ref. 2) by clarifying current roles and responsibilities; (2) Develop a long-term strategy to ensure that the Federal biotechnology regulatory system is equipped to efficiently assess the risks, if any, of the future products of biotechnology; and (3) Commission an expert analysis of the future landscape of biotechnology products.

In directing the agencies to accomplish these three tasks, the Administration's goal is to ensure public confidence in the regulatory system and improve the transparency, predictability, coordination, and, ultimately, efficiency of the biotechnology regulatory system.

To accomplish the tasks described in the July 2015 EOP Memorandum, EPA, FDA, USDA and EOP formed a Biotechnology Working Group, which was established under the auspices of the Emerging Technologies Interagency Policy Coordination (ETIPC) Committee. Members of this working group spent the last 14 months performing a detailed analysis of the Federal system for regulation of biotechnology products, including by reviewing more than 900 comments that were submitted in response to a Request for Information that was posted last fall and interacting with members of the public at three public meetings that were held in different regions of the country. These meetings included presentations describing agency-specific oversight of biotechnology products, discussions of case studies that provided concrete examples of how various biotechnology products might navigate the Federal biotechnology regulatory system, and breakout listening sessions with participants and representatives from the agencies. Transcripts of the public meetings, including comments received at the meetings, were placed in the public docket, along with all of the comments received in response to the Request for Information and a summary of individual input received during the breakout listening sessions.

On September 16, 2016, the Administration released the proposed update to the Coordinated Framework, available at: *https://www.whitehouse.gov/sites/default/files/microsites/ostp/biotech_coordinated_framework.pdf,* and a *National Strategy for Modernizing the Regulatory System for Biotechnology Products,* available at: *https://www.whitehouse.gov/sites/default/files/microsites/ostp/biotech_national_strategy.pdf,* consistent with the first and second activities identified in the July 2015 EOP Memorandum. In addition, EPA, FDA, and USDA have commissioned an independent study by the National Academy of Sciences to satisfy the third of the three activities specified above

With respect to the proposed update to the Coordinated Framework, the July 2015 EOP Memorandum listed four areas to be addressed:

1. Clarify which biotechnology product areas are within the authority and responsibility of each agency;
2. Clarify the roles each agency plays for different product areas, particularly for those products that fall within the scope of multiple agencies, and how those roles relate to each other in the course of a regulatory assessment;
3. Clarify a standard mechanism for communication and, as appropriate, coordination among agencies, while they perform their respective regulatory functions, and for identifying agency designees responsible for this coordination function; and
4. Clarify the mechanism and timeline for regularly reviewing, and updating as appropriate, the Coordinated Framework to minimize delays, support innovation, protect health and the environment and promote the public trust in the regulatory systems for biotechnology products.

To accomplish the first task, the proposed update to the Coordinated Framework describes the types of biotechnology product areas regulated by the various components within each primary regulatory agency (*i.e.,* EPA, FDA, or USDA), organized by agency (see Section D of the proposed update to the Coordinated Framework). To accomplish the second task, the proposed update to the Coordinated Framework provides a table of responsibilities, organized by biotechnology product area (see Table 2. of the proposed update to the Coordinated Framework). The table describes the offices within each agency or agencies that may have regulatory responsibility for a given biotechnology product area, as well as relevant coordination across the agencies. To accomplish the third task, the proposed update to the Coordinated Framework describes memoranda of understanding (MOU) among the agencies, and the types of products and information that are covered within the scope of each MOU (see Section D 2 of the proposed update to the Coordinated Framework). To accomplish the final task, Section E of the proposed update to the Coordinated Framework discusses provisions for future review of the Coordinated Framework.

Information Requested

The National Science and Technology Council requests relevant comments that can inform the finalization of the proposed update to the Coordinated Framework by clarifying the current roles and responsibilities of the EPA, FDA, and USDA consistent with the objectives described in the July 2, 2015 EOP Memorandum.

Respondents are welcome to address one or more of the following questions in regard to the proposed update to the Coordinated Framework. Respondents are asked to identify which question(s) they are addressing.

1. What additional clarification could be provided regarding which biotechnology product areas are within the statutory authority and responsibility of each agency?
2. What additional clarification could be provided regarding the roles that each agency plays for different biotechnology product areas, particularly for those product areas that fall within the responsibility of multiple agencies, and how those roles relate to each other in the course of a regulatory assessment?
3. What additional clarification could be provided regarding communication and, as appropriate, coordination among agencies, while they perform their respective regulatory functions, and for identifying agency designees responsible for this coordination function?
4. What additional clarification could be provided regarding the mechanism and timeline for regularly reviewing, and updating as appropriate, the Coordinated Framework to minimize delays, support innovation, protect health and the environment and promote the public trust in the regulatory systems for biotechnology products?

References

These references are available electronically at *http://www.regulations.gov.* We have verified the Web site addresses, but we are not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.

1. Executive Office of the President. Office of Science and Technology Policy, Office of Management and Budget, United States Trade Representative, and Council on Environmental Quality. Modernizing the Regulatory System for Biotechnology Products, July 2, 2015. Available online at: *https://www.whitehouse.gov/sites/default/files/microsites/ostp/modernizing_the_reg_system_for_biotech_products_memo_final.pdf.*
2. Executive Office of the President. Office of Science and Technology Policy. Coordinated Framework for Regulation of Biotechnology. 51 FR 23302, June 26, 1986. Available online at: *http://www.aphis.usda.gov/brs/fedregister/coordinated_framework.pdf.*

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–22802 Filed 9–21–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78862; File No. SR–OCC–2016–002]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Concerning Enhancements to The Options Clearing Corporation's Governance Arrangements

September 16, 2016.

On July 15, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR–OCC–2016–002 pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published in the **Federal Register** on

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

August 3, 2016.[3] The Commission did not receive any comments on the proposed rule change. On August 24, 2016, OCC filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

OCC is amending its Certificate of Incorporation, By-Laws, and Board of Directors ("Board") Charter to require that only one Management Director serve on OCC's Board (as opposed to the current requirement of two Management Directors). Moreover, OCC is proposing to amend its By-Laws and Rules to delete all references to the title and responsibilities of the Management Vice Chairman. In addition, OCC is amending its By-Laws to: (i) Provide that the Compensation and Performance Committee ("CPC") [5] and the Audit Committee ("AC") each will be chaired by a Public Director; (ii) modify the composition requirements of the Risk Committee ("RC") to, among other things, provide that an Exchange Director be a member of the Risk Committee; (iii) provide for action by the OCC Board in the nomination process for Member Directors and Public Directors; (iv) eliminate term limits for Public Directors; and (v) consolidate By-Law sections that identify the committees of the Board into a single section of the By-Laws. Finally, OCC is amending the Charters of the Board and the AC, CPC, Governance and Nominating Committee ("GNC"), RC, and Technology Committee ("TC") (collectively, "Board Committees" or "Committees" and each a "Board Committee" or "Committee") that stem from scheduled reviews of such documents.

According to OCC, the amendments to the Board and Committee Charters are designed, in general, to provide more clarity and transparency around the oversight functions and responsibilities of the Board and each of its Committees and provide for a more comprehensive and robust oversight framework for the financial reporting, audit and compliance, compensation and performance, governance and nomination, risk, and technology functions at OCC.

The amendments to OCC's Certificate of Incorporation, By-Laws, Rules, Board and Committee Charters, and Amended and Restated Stockholders Agreement are described in detail below.

All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

(1) Amendments to OCC's Certificate of Incorporation

OCC is amending its Certificate of Incorporation to state that the number of Management Directors serving on OCC's Board shall be such number as shall be fixed by or pursuant to OCC's By-Laws.[6] OCC stated that the purpose of this proposed change is ultimately to require that only one Management Director shall serve on OCC's Board. OCC will also amend its By-Laws to state that one Management Director shall serve on OCC's Board (as discussed in more detail below). The amendments will also ensure consistency among all of OCC's governing documents concerning the number of Management Directors on OCC's Board. OCC's Certificate of Incorporation and By-Laws currently state that OCC's Board shall be composed of Members Directors, Exchange Directors, Public Directors, and two Management Directors. Recently, however, there has been a vacancy for one Management Director position and only one Management Director is serving on the Board at this time.[7] OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and in light of recent experience since the vacancy of the second Management Director position, believes that amending the Board composition to require only one Management Director on OCC's Board will provide an appropriate level of management representation in the Board-level oversight of OCC. OCC stated that the Executive Chairman, as Management Director, continues to represent management's viewpoint on OCC's Board. Moreover, the Board has access to OCC's management team, which OCC believes ensures that the Board has continued access to management's perspectives on the business and affairs of OCC. Furthermore, OCC notes that, prior to the addition of a second Management Director seat in 2013, OCC has historically had only one Management Director serving on its Board.[8] Accordingly, OCC believes that the proposed amendments would continue to provide for prudent governance arrangements at OCC. OCC is also proposing conforming changes to the Board Charter as described below.

(2) Amendments to OCC's By-Laws and Rules

(a) Number of Management Directors on OCC's Board

Consistent with the amendments to the Certificate of Incorporation, described above, OCC is amending Article III, Section 1 of its By-Laws to state that only one Management Director will serve on OCC's Board (as opposed to the current requirement of two). As noted above, OCC's Board continually evaluates the leadership structure at OCC, including the appropriate number of Management Directors for OCC's Board, and believes that amending the Board composition to require one Management Director on OCC's Board will continue to provide an appropriate level of management representation in the Board-level oversight of OCC. OCC is also making conforming changes to Article III, Sections 10 (Resignations) and 12 (Filling of Vacancies and Newly Created Directorships) of the By-Laws to reflect that only one Management Director, the Executive Chairman, would be serving on OCC's Board.

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[3] Exchange Act Release 78438 (July 28, 2016), 81 FR 51220 (August 3, 2016) (SR–OCC–2016–002).

[4] In Amendment No. 1, OCC revised Item 2 of Form 19b–4 to confirm that holders of all OCC common stock unanimously consented to the amendments to OCC's Certificate of Incorporation and to Article III, Sections 1, 10, 12, and 15 of its By-Laws as approved by OCC's Board at a meeting held on May 4, 2016 and as contained within the proposed rule change. Amendment No. 1 clarified further that changes to OCC's Certificate of Incorporation would not take effect until filed with Delaware Secretary of State. Amendment No. 1 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

[5] As described below, the Performance Committee will be renamed the Compensation and Performance Committee.

[6] The number of Management Directors required to serve on OCC's Board will be stipulated by Article III, Section 1 of OCC's By-Laws. Article XI, Section 1 of OCC's By-Laws states that Article III of the By-Laws may not be amended by action of the Board without the approval of the holders of all of the outstanding Common Stock of the Corporation entitled to vote thereon. Accordingly, any proposed change in the number of Management Directors required to serve on OCC's Board will continue to be subject to stockholder approval.

OCC is also making conforming changes to Article III, Sections 10 (Resignations) and 12 (Filling of Vacancies and Newly Created Directorships) of the By-Laws to reflect that only one Management Director, the Executive Chairman, will be serving on OCC's Board.

[7] In 2014, the Commission approved a proposed rule change providing that OCC's President would not be considered a Management Director and, therefore, only one Management Director (the Executive Chairman) currently serves on the Board. *See* Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR–OCC–2014–18).

[8] In 2013, the Commission approved a proposed rule change by OCC to provide for the separation of the powers and duties combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman and President, and to create an additional directorship to be occupied by the President. *See* Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR–OCC–2013–09).

(b) Elimination of Management Vice Chairman Role

OCC is amending its By-Laws and Rules to eliminate the role of Management Vice Chairman. The office of Management Vice Chairman has been vacant for a number of years and has not been included in the Board's current discussions regarding management succession planning. During that time, OCC's thought process surrounding leadership roles at OCC has evolved. OCC believes that any of the responsibilities of the Management Vice Chairman have been appropriately handled by other officers of OCC, primarily the Executive Chairman and President (or where applicable, other officers such as the Secretary or Directors such as the Member Vice Chairman) [9] and as a result, this role is being eliminated from OCC's By-Laws and Rules. OCC believes the amendments will more accurately reflect the current state of affairs regarding the office, ensure consistency across all of OCC's governing documents, and provide more clarity and transparency regarding OCC's intended governance arrangements.

In particular, OCC is amending (i) By-Laws Article I.A.(13); Article II, Section 4; Article III, Section 15; Article IV; Article V, Sections 1 and 3; Article VI, Section 17; Article VIII, Section 5; Article IX, Sections 12 and 14 and (ii) Rules 305, 309, 309A, 505, 609A, 801, 804, 805, 901, 903, 1104, 1106, 1309, 1402, 1405, 1604, 1610, 2104, 2110, and 2408 to remove all references to and responsibilities of the role of Management Vice Chairman.

(c) Committee Descriptions and Other Conforming By-Law Amendments

OCC is amending Article III of its By-Laws to provide descriptions of the AC, CPC, GNC, RC, and TC in a single section of the By-Laws. Specifically, OCC is amending its By-Laws to consolidate existing Article III, Section 4 (which concerns the GNC) and existing Article III, Section 9 (which concerns the RC,[10] the TC,[11] and the Board's ability to designate persons to serve on Committees, generally), into Article III, Section 4 and adding descriptions of the CPC and AC to Article III, Section 4 of its By-Laws in order to provide a more transparent, centralized, and unified statement describing all of the Board Committees.

In addition, OCC will make a non-substantive drafting clarification to existing language being relocated from Article III, Section 9 to the introductory section of Article III, Section 4 to clarify that the Board is required to designate persons to serve on the specifically enumerated Committees therein.

The amended By-Laws description of the AC will reflect existing requirements in the AC and GNC Charters that, on an annual basis, the Board of Directors shall appoint an AC selected from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board, provided that no Management Director may serve on the AC. The description of the AC will also include a new requirement that the chairman of the AC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below).

The description of the CPC will reflect the existing requirement that, on an annual basis, the Board of Directors shall appoint a CPC and that the CPC generally consists of the Executive Chairman, the Member Vice Chairman, and at least one Public Director.[12] Consistent with the preceding sentence, all of the CPC members will be selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Executive Chairman and shall serve at the pleasure of the Board. The description will also include a new requirement that the chairman of the CPC shall be designated by the Board from among the Public Director member(s) of the Committee (as described further below). OCC believes that consolidating the descriptions of all Board Committees into Article III, Section 4 of its By-Laws will provide more clarity and transparency to OCC's participants regarding the existence and composition of such Committees.

OCC is amending Article IV, Section 1 of the By-Laws to provide that the Board will elect the Executive Chairman and Vice Chairman of the Board upon the nomination of the GNC and also elect the President of OCC (in addition to the Secretary and Treasurer). In addition, OCC is amending Article IV, Section 7 to delete a requirement that the Member Vice Chairman preside at the meetings of any Committee of the Board of Directors charged with the responsibility for evaluating the performance and compensation of officers as the CPC will now be chaired by a Public Director. In addition, OCC will make amendments to clarify that the Member Vice Chairman will preside over meetings of the Board and stockholders in the absence of the Executive Chairman because the President cannot preside over meetings of the Board.[13]

(d) Compensation and Performance Committee and Audit Committee Independence

In addition to the changes described above, OCC will also change the Board Committee descriptions in proposed Article III, Sections 4(a) and (b) of the By-Laws to reflect the requirement that a Public Director [14] chair the AC and the CPC. The GNC recently performed a review of governance trends and best practices among self-regulatory organizations as they relate to board-level compensation committees.[15] OCC undertook the review to further the Board's oversight of employee compensation and benefits, recognizing that the CPC primarily functions as a compensation committee (although it also has broad oversight responsibilities for financial and budget matters). OCC believes that having the CPC chaired by a Public Director (rather than a Member Director,[16] which is currently the case) will be more consistent with governance best practices and practices of other self-regulatory organizations. OCC believes that such a change will ensure that compensation and related decisions are undertaken in a way that is likely to support objective judgment and independence unfettered by potential conflicts that may exist by having a Member Director chair the CPC given OCC's self-regulatory responsibilities.

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[9] For example, under proposed revisions to Article IV, Section 7, the Member Vice Chairman would preside over Board and stockholder meetings in the absence of the Executive Chairman.

[10] The description of the RC in proposed Article III, Section 4(d) of the By-Laws would reflect changes to OCC's existing policy regarding the composition of the RC in order to conform the By-Law provision to changes recommended as a result of the annual review of the RC Charter (as discussed below). *See infra* note 15, and related text.

[11] The Commission recently approved a proposed rule change by OCC to adopt a Technology Committee of the Board of Directors. *See* Securities Exchange Act Release No. 77042 (February 3, 2016), 81 FR 6915 (February 9, 2016) (SR–OCC–2015–018).

[12] The description of the CPC in the By-Laws will include the general requirement that CPC shall include the Executive Chairman, the Member Vice Chairman, and at least one Public Director. The description is not intended to change the more specific CPC composition requirements in the CPC Charter that the committee consist of a Public Director Chair, the Executive Chairman, the Member Vice Chairman, and three or more other directors appointed annually by the Board.

[13] *See* OCC's By-Laws Article IV, Section 8.

[14] *See* Article III Section 6A of OCC's By-Laws regarding Public Directors.

[15] The GNC Charter provides, in relevant part, that the purpose of the GNC is to review on a regular basis the overall corporate governance of OCC and recommend improvements to the Board when necessary.

[16] *See* OCC's By-Laws Article III, Section 3 and Section 5.

The Board agreed with the GNC's recommendation.

Additionally, the GNC reviewed proposed regulatory standards for audit committees of self-regulatory organizations that will require such audit committees to be independent based on facts determined by a given self-regulatory organization's board of directors. Such review caused the GNC to recommend to the Board that a Public Director should be required to chair the AC in order to align with governance best practices for audit committees and to support the objectivity of the AC. The Board agreed with the GNC's recommendation. Moreover, and in furtherance of the goal of AC independence, any currently serving Management Director(s) will not be eligible to serve on the AC.

(e) Risk Committee Membership

OCC is amending Article III of its By-Laws to modify the composition requirements of OCC's RC. Existing Article III, Section 9 of OCC's By-Laws currently requires that the RC shall consist of the Executive Chairman, the Member Vice Chairman, at least three other Member Directors selected on a basis that shall not discriminate against any Exchange, and one or more Public Directors. OCC is replacing this description of the RC with new Article III, Section 4(d), which will modify the RC composition requirements to (i) provide that an Exchange Director[17] be a member of the RC and (ii) require that at least one Member Director serve on the RC (as opposed to the current minimum requirement of four Member Directors) and (iii) remove a specific requirement that one of the Member Directors on the RC be the Member Vice Chairman.

The GNC reviewed the membership composition of the RC and determined that one Exchange Director should be a member of the RC. Historically, the RC did not include Exchange Directors because Member Directors were much more directly concerned with the risk management and membership function of OCC due to the mutualization of risk among Clearing Members as well as the fact that Clearing Members are responsible for the contribution of margin and clearing fund deposits. Given the evolution of the markets for which OCC provides clearance and settlement services, OCC now believes that an Exchange Director should be a member of the RC. OCC believes that Exchange Directors have expertise and unique perspective on matters such as market risk as well as sophistication as to special risks arising from trading practices, strategies and new products.

In addition, the GNC recommended, and the Board approved, a reduction in the minimum composition requirement for Member Directors on the RC to allow for greater flexibility in the selection of Directors with the requisite skills and expertise to serve on the RC. OCC believes that Member Director participation on the RC is vital and will continue to require that at least one Member Director serves on the RC. OCC also believes, however, that it is necessary and appropriate to maintain flexibility to ensure that the RC comprises those Directors that have the appropriate mix of knowledge and expertise necessary to provide for the prudent oversight of risk matters at OCC.

(f) Nomination Process for Member Directors and Public Directors

OCC is amending Article III, Sections 5 and 6A; Article IV, Section 1; and adopting Amendment No. 1 to Amended and Restated Stockholders Agreement to provide for Board action in the nomination process for Member Directors, Public Directors, the Executive Chairman, and Member Vice Chairman in conformance with the process set forth in the GNC Charter.[18] Currently, Board action is not a part of the annual election process for Member Directors and Public Directors as described in the By-Laws and the Amended and Restated Stockholders Agreement. The amendments will provide that such persons will be nominated by the GNC for purposes of the Board's annual election process and then confirmed by the Board. OCC believes that the rule change will help ensure an appropriate level of oversight and participation by the full Board in determining its own composition and that the composition of the Board fulfils its needs for particular skills and qualifications.

(g) Elimination of Public Director Term Limits

OCC is amending Article III, Section 6A of its By-Laws, Section IV.1. of the GNC Charter, and Section II.D. of the Board Charter to remove term limits for Public Directors. OCC believes it is appropriate to eliminate term limits for Public Directors because the learning curve for directors of OCC is significant. OCC also believes that it often takes several years for directors who come from outside the industry to achieve the particularized degree of knowledge and understanding about the business that is necessary to provide significant value. Additionally, the GNC reviewed OCC's term limit policy for Public Directors in light of benchmark data and governance trends and determined that the elimination of term limits for Public Directors is consistent with governance arrangements at large corporations. Therefore, OCC is proposing to remove its term limits for Public Directors in the interest of assuring that OCC has access to the full benefit of a Public Director's understanding and learning, with respect to OCC and the markets OCC serves, as it develops over time.

(3) Amendments to Board and Board Committee Charters and the Fitness Standards

OCC represents that its amendments to the Board Charter are intended to: (i) Harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules; (ii) better align the Board Charter with the Board's Corporate Governance Principles and By-Laws; (iii) reflect recent changes involving Board Committee Charters; (iv) in general, restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's role as a systemically important financial market utility; and (v) make certain non-substantive administrative changes to the Charter.

(a) Membership and Organization of the Board

OCC is amending Section II of the Board Charter regarding membership and organization requirements to reflect the elimination of the role of Management Vice Chairman as described above. As a result, in the event that the Executive Chairman is absent or disabled, the Member Vice Chairman shall preside over meetings of the Board. OCC is also making amendments that will allow for additional meetings of the Board being called as the Board deems appropriate (such meetings shall be called by the Executive Chairman or his designee) and that specify that the Executive Chairman shall consult with the Corporate Secretary (in addition to other directors or officers) when establishing Board meeting agendas.

OCC is also making amendments intended to strengthen the Board's governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. In particular, the amendments will: (i) Require that the Board meet in executive session at each regular meeting of the Board; (ii) allow the Board to determine who will participate in such sessions; (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest; and (iv) require the Board to select a Director to chair executive sessions in the absence of the Executive Chairman. The amendments will also require that Board meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. Specifically, the chair of the executive session will determine whether separate minutes of the executive sessions are to be recorded as well as the level of detail to be included in such minutes, provided that Board meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

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[17] *See* Article III Section 6 of OCC's By-Laws regarding Exchange Directors.

[18] The GNC Charter had already been reviewed by OCC in 2014 and approved by the Commission. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR–OCC–2014–09).

In addition, OCC is also amending the Board Charter to state that the Board comprises one Management Director, rather than two Management Directors, in conformance with the proposed Certificate of Incorporation and By-Laws changes described above. OCC is also amending the Board Charter to reflect an increase in the number of Public Directors serving on the Board from three to five.[19]

To achieve a balanced representation on the Board among Member Directors, OCC is amending the Board Charter to state that the considerations involved in determining the nomination of Member Directors should include the volume of business transacted with OCC during the prior year and the mix of Member Directors that are primarily engaged in agency trading on behalf of retail customers or individual investors. OCC believes that the amendments reinforce the existing requirement in Article III, Section 5 of OCC's By-Laws that the GNC shall endeavor to achieve balanced representation among Clearing Members on the Board of Directors to assure that: (i) Not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume, and (ii) the mix of Member Directors includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. OCC is removing geographic location of Clearing Members as a factor for consideration because OCC believes that location is no longer a significant consideration given modern technology and the evolution of the industry. OCC is also adding language to the Board Charter (as well as the Committee Charters) to discourage Directors from attending meetings of the Board by telephone as currently provided in the Code of Conduct for OCC Directors. Attendance by telephone will be generally discouraged because OCC believes the Board may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Board members were to meet in person.

(b) Responsibilities of the Board

OCC is making amendments to the Board Charter that are primarily intended to: (i) Harmonize the description of the Board's obligations in the Board Charter with the description of the Board's obligations in OCC's By-Laws and Rules as well as the Board's Corporate Governance Principles[20] and (ii) restate the Board's oversight responsibilities in a manner designed to provide for prudent governance arrangements in light of OCC's position as a designated systemically important financial market utility.

In cases when an obligation of the Board is expressed in both the Board Charter and OCC's By-Laws and Rules, OCC is will remove the obligation from the Board Charter. OCC will replace these charter provisions with a general statement that the Board will perform those functions as the Board believes appropriate or necessary, or as otherwise prescribed by rule or regulation, including OCC's By-Laws and Rules.[21]

OCC is also making amendments to Section IV of the Board Charter designed to provide for prudent governance arrangements emphasizing that the Board's oversight role should operate in a manner consistent with its responsibilities as a designated systemically important financial market utility. Specifically, OCC is amending the Charter to state that the responsibilities of the Board include: (i) Overseeing management's activities in managing, operating and developing OCC and evaluating OCC management's performance in executing its responsibilities; (ii) selecting, overseeing and, where appropriate, replacing the Executive Chairman of the Board and the President, providing counsel and advice to the Executive Chairman and the President as well as oversight of the performance of each such officer and of OCC in order to evaluate whether the business is being appropriately managed; (iii) setting expectations about the tone and ethical culture of OCC, and reviewing management's efforts to instill an appropriate tone and culture throughout OCC; (iv) providing oversight of risk assessment and risk management monitoring processes, including with respect to systemic risk and reviewing risk tolerances submitted to the Board for approval by its Risk Committee; (v) performing an annual self-evaluation of its performance, the performance of its Committees, the performance of individual directors and Committee members; and evaluating the Corporate Governance Principles and Fitness Standards; (vi) reviewing the amount of compensation for the Board's Public Directors (*i.e.,* directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer) as well as reviewing the annual study and evaluation of OCC's system of internal accounting controls; (vii) providing oversight of internal and external audit processes and financial reporting, including approving major changes in auditing and accounting principles and practices; and (viii) oversight of OCC's information technology strategy, infrastructure, resources and risks.

In addition, OCC is modifying certain existing Board Charter provisions related to the responsibilities of the Board. Specifically, OCC is making amendments that will specify that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearing operations. OCC is also making amendments to specify that the Board's responsibility for fostering OCC's compliance with applicable laws and regulations includes compliance with banking, securities and corporation laws and other applicable regulatory guidance and standards. Additionally, OCC is amending provisions related to the oversight of succession planning and executive compensation to state more specifically that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and President; overseeing succession planning, human resource programs, and talent management processes; and overseeing the development and design of employee compensation, incentive and benefit programs.[22] The amendments will also remove a statement that OCC's Board is responsible for overseeing OCC's processes and framework for assessing, managing and monitoring strategic, financial and operational risk as this function is performed by the RC (as reflected in its Charter) with oversight from the Board.

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[19] The Commission approved the increase in the minimum number of Public Directors on OCC's Board from three to five in July 2014. *See* Securities Exchange Act Release No. 72564 (July 8, 2014), 79 FR 40824 (July 14, 2014) (SR–OCC–2014–09).

[20] OCC stated that the purpose of the Board's Corporate Governance Principles is to assist OCC's Board in monitoring the effectiveness of policy and decision making at the Board and management levels. In particular, OCC meant the Board's Corporate Governance Principles to address OCC's obligations as a systemically important financial market utility to have policies and procedures in place that promote sound governance, including those policies and procedures identified in the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

[21] The change will remove from the Board Charter some of the more specific obligations of the Board as already set forth in the By-Laws and Rules in favor of a more general statement intended to reflect that the Board would perform such functions as necessary or appropriate under OCC's Rules, By-Laws and other rules or regulations. The Board Charter provisions in question can generally be identified by footnote citations to By-Law provisions included in the Board Charter in Exhibit 5C.

OCC is also making non-substantive organizational changes in Section IV of the Board Charter. Specifically, OCC will combine provisions related to the Board's responsibilities for approving and overseeing OCC's business strategies and monitoring OCC's performance of clearance and settlement services.

(c) Other Administrative Changes

In addition to the changes described above, OCC meant certain of the amendments to the Board Charter to address non-substantive, administrative issues. For example, certain amendments are being proposed to Section III of the Board Charter to reflect the adoption of the TC the GNC, and renaming of the Performance Committee to the CPC, as described herein. In addition, OCC is also amending Section I of the Board Charter to more accurately state that the Board is responsible for providing direction to and overseeing the conduct of the affairs of OCC (as opposed to just managing the business and affairs) and to remove an unnecessarily specific list of OCC stakeholders. OCC is also making amendments to require an annual (as opposed to the less specific "periodic") review of the Board Charter, including the Corporate Governance Principles and Fitness Standards.

(d) Fitness Standards for Directors, Clearing Members and Others

OCC is also amending the Fitness Standards to remove descriptions of the categories of directors represented on the Board and the process by which they are nominated for Board service as these descriptions are already maintained in Article III of OCC's By-Laws and the relevant Committee Charters. Eliminating these redundant descriptions in the Fitness Standards will promote efficiency and clarity by eliminating the need to ensure consistency of the same information across multiple documents. OCC believes that the amendments will underscore that the Fitness Standards are intended to facilitate the performance of OCC's role as a systemically important financial market utility.

(e) Common Amendments to Each Committee Charter

OCC is making conforming amendments to the Committee Charters as a result of the Commission approving certain changes to the GNC Charter. Specifically, OCC is amending each Committee Charter to confirm that each Board Committee has access to all books, records, facilities and personnel of OCC in carrying out the respective Board Committee's purpose and responsibilities. OCC stated that this amendment to the Committee Charters will make explicit a longstanding principle under which each Committee has operated. Additionally, references to the "Governance Committee" in each Committee Charter will be changed to the "Governance and Nominating Committee" to reflect the formation of the GNC.

Furthermore, OCC will delete a provision from each Committee Charter that grants the Chair of each Board Committee the authority to act on behalf of the respective Board Committee in situations in which immediate action is required and convening a Board Committee meeting is impractical. Although this provision also requires each Chair to report such actions to the respective Board Committee for ratification as soon as practicable, OCC believes that removing this provision is appropriate from a governance perspective because it supports deliberation and action by a Board Committee as a whole rather than action by a Chair. In addition, OCC represented that, historically, each Board Committee has been able to convene when necessary.

OCC is changing each Committee Charter to strengthen OCC's Board Committee governance framework and practices surrounding meetings in executive sessions by providing added structure regarding the convening and attendance of executive sessions and promoting the enhanced recordation of important meeting events and discussions. Specifically, each Committee Charter will be amended to: (i) Require that each Committee meet in executive session at each regular meeting of the Committee; (ii) allow the Committee to determine who will participate in such sessions; and (iii) provide for the exclusion of management, invited guests, and individual directors from executive sessions where discussions may involve certain sensitive matters or conflicts of interest. The amendments will also require that each Committee's meeting minutes reflect, at least in summary fashion, the general matters discussed in an executive session. In particular, the Chair (or Acting Chair) will determine whether separate minutes of the executive sessions are to be recorded as well as the level of detail to be included in such minutes, provided that Committee meeting minutes must, at a minimum, reflect that an executive session was convened and broadly describe the topic(s) discussed.

Additionally, the Committee Charters will be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval. Generally speaking, Committees must obtain pre-approval from the Board to hire advisors. OCC's understanding is that public company board committees frequently are authorized to engage advisors without board pre-approval at the company's expense to preserve autonomy and independence and to assist them in the execution of their responsibilities as deemed necessary. Under the amended charters, each Committee's engagement of an advisor, including fees and expenses, will be referenced in its annual report to the Board. OCC intends these amendments to foster Committee independence as well as timely Committee access to expertise relevant to the discharge of its delegated responsibilities while preserving Board oversight via the application of existing reporting mechanisms.

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[22] OCC noted that a deleted reference to the evaluation of senior management is now covered by point (i) described in the paragraph above.

OCC is also amending its Committee Charters to specify that each Committee should evaluate its own and its individual members' performances on an annual basis (as opposed to regularly) to provide more clarity and specificity regarding the timing of each Committee's self-assessment process.

(4) Amendments to the Audit Committee Charter

OCC is making amendments to the AC Charter intended to, among other things: (i) Reinforce the independence of the AC; (ii) more accurately memorialize and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes and enhance the independence and objectivity in connection therewith; and (iii) in general, provide more explicit descriptions of the AC's functions and responsibilities.

(a) Purpose, Membership and Authority

OCC is changing Sections I, II and III of the AC Charter related to the purpose, membership and organization, and authority of the AC. In Section I of the AC Charter, OCC is making organizational changes to certain statements regarding the AC's responsibility to serve as an independent and objective party to oversee OCC's system of internal control, compliance environment and processes. OCC stated that these changes are non-substantive in nature. OCC is also making various textual clarifications, which OCC believes are non-substantive, in Section I, including, for example, replacing the term "independent accountants" with "external auditors" and replacing "Corporation" with "OCC," which will extend throughout the entire AC Charter. OCC does not intend for the amendments to change the term "independent accountants" to "external auditors" to signify a change in roles or responsibilities.

OCC is also amending Section II of the AC Charter to reinforce the independence of the AC. Specifically, the amendments provide that all members of the AC be independent from OCC's management, as determined by the Board from time to time, and that the Chair of the AC be a Public Director.[23] Additionally OCC is making amendments to clarify that the Management Director, as described in Section 7 of Article III of OCC's By-Laws, is ineligible to serve on the AC.[24] OCC is also revising the AC Charter to state that the AC will meet regularly, and no less than once annually (as opposed to "at least annually"), with management, OCC's Chief Financial Officer, Chief Audit Executive ("CAE") and Chief Compliance Officer ("CCO") in executive sessions to discuss certain private matters. According to OCC, the purpose of this change is to signify that these meetings and interactions occur more than once per year. Section II of the AC Charter is amended to explicitly provide the authority for the CAE and CCO to communicate directly with the Chair of the AC, with respect to any of the responsibilities of the AC, outside of regular meetings to further underscore their independence. Further, OCC is amending Section II of the AC Charter to state that attendance at an AC meeting by telephone is discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person.

OCC is also amending the AC Charter to provide that the AC shall make such reports to the Board as deemed necessary or advisable for the purpose of promoting effective communication between the AC and the Board, in line with requirements in other Committee Charters.

OCC is amending Section III of the AC Charter to confirm that the AC's authority to hire advisors includes the authority to approve the related fee and retention terms [25] In addition to more accurately reflecting current Committee practice, it would conform the AC charter to OCC's other Committee Charters (*i.e.*, the CPC, GNC, RC and TC Charters) with respect their authority to hire advisors and approve related fees and retention terms. As noted above, each of OCC's Committee Charters will be amended to permit any Board Committee to engage specialists or advisors to assist it in carrying out its delegated responsibilities without prior Board approval in order to foster Committee independence as well as timely access to relevant expertise from outside specialists or advisors. The amendments will clarify that this authority also extends to the approval of related fee and retention terms.

(b) Functions and Responsibilities

OCC is also making a number of amendments to Section IV of the AC Charter intended to reinforce and expand upon the activities of the AC with respect to the oversight of OCC's financial reporting processes, to enhance the independence and objectivity in connection therewith, and to more explicitly describe the AC's functions and responsibilities.

Oversight of External Auditor and Financial Reporting

OCC is amending the AC Charter regarding the AC's oversight of financial reporting and external auditors. OCC intends the amendments to the AC Charter to more accurately memorialize and expand upon the AC's role with respect to financial reporting at OCC. With respect to financial statements and financial reporting, the amendments state that the AC is responsible for: (i) Discussing with management and external auditors OCC's audited and unaudited financial statements; (ii) upon management's recommendation, approving OCC's financial statements after reviewing with management and external auditors prior to issuance;[26] (iii) reviewing with management, external auditors and OCC's Internal Audit Department significant financial reporting issues and judgments made in connection with the preparation of financial statements, critical accounting policies and estimates, any major issues regarding accounting principles and financial statement presentation and the effect of regulatory and accounting initiatives; (iv) approving material changes to OCC's accounting policies; (v) resolving disagreements between management and external auditors regarding financial reporting; and (vi) reviewing and discussing with external auditors any audit problems or difficulties, and management's response thereto.

Additionally, to improve the AC's oversight and evaluation of external auditors, OCC is amending the AC Charter to require the AC to: (i) Discuss with management the timing and process for implementing a rotation of the engagement partner of the external auditor and any other active audit engagement team partner; (ii) monitor and evaluate the qualifications of both the external auditor and engagement partner; (iii) consider whether there should be a regular rotation of the audit firm itself; and (iv) pre-approve all services provided by the external auditor (as opposed to only non-audit services).

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[23] The change concerning the AC Chair will conform the AC Charter to proposed Article III, Section 4(a) of OCC's By-Laws, as described above.

[24] In the event OCC has a Non-Executive Chairman, such individual will not be considered a Management Director.

[25] OCC will also remove a statement concerning the AC's authority to obtain advice from independent counsel, accountants or others as such statement would be replaced by a broader expression of the AC's authority to hire advisors.

[26] OCC intends the amendment to restate, clarify, and expand on an existing statement in the AC Charter regarding the AC's review of annual audited financial statements, which OCC will delete.

Oversight of Internal Audit, Compliance and Compliance-Related Matters

OCC is amending Section IV of the AC Charter in order to more clearly articulate the AC's responsibility for the oversight of Internal Audit. Specifically, OCC is making amendments stating that the AC's responsibilities include reviewing and approving the Internal Audit Policy on an annual basis and monitoring ongoing internal audit activities. OCC is also making amendments stating that the AC is responsible for approving OCC's annual internal audit plan and approving any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan to explicitly codify these existing AC practices in the AC Charter. OCC believes that the AC, which serves as an independent and objective party tasked with the oversight of OCC's system of internal control, auditing, accounting, and compliance processes, is the appropriate body to approve OCC's internal audit plan and any CAE recommendations for removing or deferring any audits from a previously approved internal audit plan. OCC believes that the amendments will provide more clarity and transparency regarding OCC's governance arrangements by codifying these responsibilities found in the AC Charter.

OCC is also amending to Section IV of the Charter to more clearly articulate the AC's responsibility for oversight of compliance and compliance-related matters, including: (i) Annually reviewing and approving OCC's Compliance Policy and employee Code of Conduct; (ii) reviewing and approving the Compliance Department's process for establishing the risk-based annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving changes to the Compliance Testing Plan recommend by the CCO; and (iii) monitoring ongoing compliance activities by reviewing reports and other communications prepared by the Compliance Department, including updates from the CCO, and inquiring of management regarding steps taken to address items raised.

In addition, OCC is clarifying the AC's responsibilities with respect to: (i) Reviewing on a regular basis the significant deficiencies and material weaknesses in the design or operation of OCC's internal controls (as such issues are identified by or presented to the AC); (ii) reviewing fraud involving OCC's management or other employees; and (iii) reviewing and approving (as opposed to just establishing) OCC's "whistleblower" procedures that govern reporting of illegal or unethical conduct, accounting irregularities and similar matters and discussing any substantive issues identified through such procedures with relevant parties.

Oversight of OCC's Chief Audit Executive and Chief Compliance Officer

OCC is amending Section IV of the AC Charter to provide that the CAE and CCO will each report functionally to the AC and administratively to the Executive Chairman.[27] According to OCC, the amendments will make more explicit the reporting lines for these functions and underscore the independence of the CAE and CCO. In addition, OCC is eliminating provisions of the AC Charter that relate to the AC's assessment of the performance of the CAE and Internal Audit Department, the AC's approval of the compensation of the CAE, and the AC's assessment of the Compliance function and replace them with provisions that take into account the involvement of the Executive Chairman in those functions. As amended, the AC Charter will state that the AC, in consultation with the Executive Chairman, will review the performance of the Internal Audit function and the CAE, the Compliance function and the CCO, and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for each. OCC intends the changes related to the performance and compensation setting regime for the CAE and CCO to reflect the fact that the CAE and CCO report administratively to the Executive Chairman while reporting functionally to the AC.

(5) Amendments to the Compensation and Performance Committee Charter

OCC is changing its CPC Charter to explicitly describe the Committee's functions and responsibilities with respect to OCC's human resources, compensation and employee benefit programs, and insurance programs. The amendments will also provide for CPC oversight of OCC's Capital Plan in recognition of the importance of providing for Board-level oversight to ensure OCC's capital and Capital Plan meet or exceed minimum regulatory standards.

(a) Purpose, Membership, and Authority

OCC is renaming the Performance Committee to the CPC to reflect its role more accurately. OCC is also amending Section I of the CPC Charter to articulate that the CPC is tasked with assisting the Board in the oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives in light of OCC's systemically important status. The CPC Charter will further delineate that the CPC is tasked with (i) recommending the compensation of OCC's Executive Chairman and President and approving the compensation of certain other officers, as appropriate; (ii) overseeing OCC's Capital Plan and financial performance; (iii) overseeing OCC's Human Resources program; (iv) overseeing the structure and design of the employee compensation, incentive and benefit programs; and (v) assisting the Board in reviewing OCC's leadership development and succession planning.

Additionally, OCC is amending Section II of the CPC Charter related to the membership and organization of the CPC to conform the CPC Charter to proposed Article III, Section 4(b) of OCC's By-Laws to state that the Chair of the CPC shall be a Public Director. In addition, OCC is changing Section II of the CPC Charter to elaborate on the CPC's responsibility to discuss and review the performance and compensation levels (including benefits and perquisites such as sign-on bonuses, retention arrangements, relocation arrangements and other financial commitments of OCC) of members of the Management Committee and certain other key officers, as appropriate.

OCC is also amending Section II to clarify that the CPC will meet at least four times per year, which reflects the minimum number of regular meetings in a year in a manner consistent with the charters of other Board Committees, and to delete a provision of the CPC Charter that requires the CPC Chair to meet in private session with the GNC Chair to discuss performance of key officers as well as a provision stating that the Chairs of the AC and RC will be invited to attend the annual meeting to discuss compensation of key officers, including the Chief Risk Officer ("CRO") and CAE.[28] The CPC Charter is amended to require that minutes of Committee meetings be circulated to the Board in conformance with general requirements applicable to all Board Committees.[29]

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[27] This change explicitly notes existing reporting lines in the AC Charter, but does not revise those reporting lines. These provisions mirror a comparable provision in the RC Charter with respect to the Chief Risk Officer.

[28] These changes are being made to reflect a consultative process as between the Executive

OCC is also amending the CPC Charter to discourage attendance at a CPC meeting by telephone because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. In addition, other clarifying and textual changes will be made including, for the reasons stated above, removal of references to the Management Vice Chairman.

Additionally, OCC will make organizational changes in Section III regarding the delegation of authority to the Administrative Committee that do not change the meaning of the rule text.

(b) Functions and Responsibilities

OCC is amending Section IV of the CPC Charter to explicitly describe the Committee's responsibilities with respect to OCC's capital structure, financial planning and corporate goals and objectives; human resources and compensation programs; and employee benefits programs in order to provide a more robust framework for the CPC's oversight functions. Additionally, OCC will remove explicit requirements in Section IV that the CPC review the Corporate Plan and Budget and OCC's performance under the Corporate Plan at each regularly scheduled meeting in favor of more general descriptions regarding the CPC's responsibilities for the oversight of the corporate financial planning process, including the corporate budget, and corporate goals and objectives. OCC intends the amendments to accommodate CPC review of annual Corporate Plans and Budgets and performance thereunder (as currently contemplated by the CPC Charter) as well as consideration of longer-term horizons and implications in the strategic planning process.

Oversight of OCC's Capital Plan

OCC is amending Section IV of the CPC Charter to explicitly provide for the CPC's responsibilities in connection with overseeing OCC's capital structure, financial planning, and corporate goals and objectives. Specifically, the amendments will state that the CPC's responsibilities include oversight of management's processes for determining, monitoring and evaluating OCC's Capital Plan,[30] including maintenance of required regulatory capital, and recommending approval of such plan to the Board. These amendments will also specify that the CPC is responsible for the annual review of OCC's Fee, Refund and Dividend Policies and making recommendations to the Board for changes to such policies and payments, if any, under the Refund and Dividend Policies. In addition, OCC is making amendments to provide that the CPC's responsibilities include the review and approval of fee changes pursuant to the Capital Plan, review and recommendation to the Board of changes to OCC's fee structure, and oversight of OCC's corporate financial planning process (including reviewing the corporate budget). Moreover, the amendments will provide for the CPC's responsibility to review OCC's annual corporate goals and objectives and recommend approval thereof to the Board and routinely receive reports regarding progress in achieving such goals and objectives. The amendments will also provide that the CPC is responsible for the periodic review of OCC's insurance program.

Oversight of Human Resources and Compensation Programs

OCC is amending Section IV of the CPC Charter to explicitly state that the CPC's responsibilities include review of OCC's Human Resources programs and policies, including OCC's talent acquisition, performance management, training, benefits and succession planning processes and review and approval of the structure, design, and funding as applicable, of employee compensation, incentive and benefit programs. OCC believes that this amendment will ensure that Board Committee oversight for management's processes for hiring, retaining and developing qualified staff and is consistent with the CPC's oversight of overall succession planning processes. Additionally, OCC is amending the CPC Charter to clarify that the CPC annually reviews and approves the goals and objectives of the Executive Chairman and President.

Further, OCC is making amendments to the CPC Charter that will require the CPC to periodically (not less than annually) review and approve the general strategy, policies and programs with respect to salary compensation (including management compensation) and incentive compensation and seek to ensure compensation policies meet evolving compensation practices so that such policies remain effective to attract, motivate and retain executive officers and other key personnel. The amendments will also require the CPC to review and approve the performance and compensation of key employees, such as members of OCC's Management Committee, at the end of each year and to make recommendations to the Board regarding the compensation of the Executive Chairman and the President. Additionally the amendments will require the CPC to review proposed material changes to executive management benefits and to periodically review the compensation of Public Directors and make recommendations to the Board with respect thereto.

OCC is amending the CPC Charter to remove certain statements regarding the review of OCC's performance under the Corporate Plan and the oversight of the administration of OCC's compensation plans as these responsibilities will be covered under the amended descriptions contained therein. OCC believes that it is prudent and appropriate to provide for CPC oversight in the areas of human resources, performance, and compensation and that the amendments will enhance OCC's overall governance arrangements with respect to the oversight and review of performance and compensation at OCC.

Oversight of Employee Benefit Programs and Other Responsibilities

OCC is also making amendments to Section IV of the CPC Charter related to the CPC's oversight responsibilities for employee benefit programs. Specifically, OCC is amending the CPC Charter to specify the CPC's responsibilities for oversight, administration, and operation of employee benefit, retiree and welfare benefit plans, including the review of funding plan obligations. The amendments will also specify the scope of employee welfare plans that the CPC reviews and the CPC's right to adopt new compensation, retirement and welfare benefit plans or to terminate existing plans other than such plans that require Board action to amend or terminate. In addition, the amendments will provide more clarity regarding the CPC's responsibilities for monitoring the Administrative Committee's duties in connection with retirement and retirement savings plans, investment strategy and performance, plan design and compliance, prudent selection of investment managers and compensation and benefits consultants, and

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Chairman and, as applicable, the RC and Board to discuss the performance of key officers including the CRO and CAE.

[29] This requirement is already included in the AC, GNC, RC, and TC Charters.

[30] *See* Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR–OCC–2014–813). *See also* Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR–OCC–2015–02).

performing such other oversight duties as called for in retirement, retirement and savings, and welfare plan documents.

OCC is making further amendments that state that the CPC is responsible for providing updates to the Board periodically regarding: (i) Actions taken by the CPC with respect to its review of OCC's compensation, retirement and employee welfare plans; (ii) the financial position and performance of these plans; and (iii) adherence to investment guidelines, in each case, where applicable.

(6) Amendments to the Risk Committee Charter

OCC is amending its RC Charter primarily to enhance OCC's governance arrangements with respect to the RC's oversight functions and responsibilities. OCC is also making amendments to better align the RC Charter with the OCC By-Laws, including changes in the composition requirements of the RC (as described above) and to reflect the adoption of the TC.

(a) Purpose, Membership and Authority

OCC is amending Section I of the RC Charter to provide that the RC will be responsible for coordinating risk oversight with other Board Committees tasked with overseeing certain risks (*e.g.*, the TC, which assists the Board in overseeing OCC's information technology risks) to achieve comprehensive and holistic oversight of OCC's risk-related matters. The amendments will also provide that the RC is responsible for the review of material policies and processes associated with risks related to new initiatives.

OCC is amending Section II of the RC Charter to provide that attendance at a RC meeting by telephone is discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC is also removing from the RC Charter, and by extension its rules, a requirement that a RC member shall recuse himself from any matter in which his firm has an interest, other than a common interest shared with Clearing Members generally or a particular class of Clearing Members. Currently, none of the Committee Charters, other than the RC Charter, contain a such recusal provision.[31] OCC believes that the identification and handling of conflicts of interest are already appropriately addressed in its Code of Conduct for OCC Directors, which governs the conduct of all directors regardless of category or committee assignment. OCC noted that, as a corporation incorporated in the state of Delaware, OCC's Directors have a fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders[32] and are bound by a duty of loyalty to OCC, which demands that there be no conflict between duty and self-interest and that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director.[33]

With respect to RC meetings, OCC is amending the RC Charter to state that the RC shall meet regularly, and no less than once annually, (rather than "at least annually") with the CRO and members of management (as opposed to other appropriate corporate officers) in separate executive sessions to discuss certain private matters. OCC stated that the purpose of the change is to signify that these meetings occur more frequently than once per year. The changes will also specifically require that the RC meet in executive session regularly with members of management. The RC will continue to have the discretion to invite any other officers it deems appropriate to meetings in executive session pursuant to the common charter amendments described above. Moreover, and in order to enhance the independence and functional reporting relationship of the CRO to the RC, OCC will make revisions to explicitly state that the CRO is authorized to communicate with the RC Chair outside of regular meetings. OCC is also amending the RC composition requirements in Section II to conform to the By-Law changes discussed above. Specifically, the RC Charter will be revised to state that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. OCC is also amending Section II to require that the RC meet at least six times a year (as opposed to seven) in recognition of the fact that the time allotted for each individual RC meeting has been expanded. Furthermore, OCC is amending Section II of the RC Charter to state that, unless a Chair is elected by the full Board, the members of the RC shall designate a Chair by majority vote. OCC stated that this amendment is in conformance with OCC's current practices for electing Committee Chairs and as described in other Committee Charters.

OCC is also amending Section III of the RC Charter to provide that, in addition to RC subcommittees, the RC may also delegate authority to OCC's Management Committee or Enterprise Risk Management Committee. As described herein, the RC is responsible for assisting the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial risks and for overseeing the overall enterprise risk management framework implemented by management. The amendment will allow the RC to delegate authority to the Management Committee and Enterprise Risk Management Committee to carry out certain tasks and responsibilities in the day-to-day risk management of OCC and to implement proposals that the RC has approved in concept where the RC deems such delegation of authority to be appropriate.

(b) Functions and Responsibilities

OCC is amending Section IV of the RC Charter to enhance its governance arrangements in connection with the oversight of membership requirements, margin requirements, the Enterprise Risk Management Program, and a number of other responsibilities.

Oversight of Membership and Margin Requirements

OCC is amending the RC Charter to provide a broader description of the RC's oversight of the adequacy and effectiveness of OCC's framework for clearing membership. OCC stated that, in general, these changes are not intended to substantively change or eliminate any of the RC's existing responsibilities with respect to its oversight of OCC's clearing membership framework and will continue to encompass the responsibilities currently enumerated in the charter.[34] Specifically, the RC Charter provisions related to the RC's oversight role with respect to clearing membership issues will be replaced with a more general statement that the RC is responsible for the oversight of OCC's framework for clearing membership, including: (i) Periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for clearing membership;[35] (ii) overseeing the processes established for reviewing and monitoring clearing membership (including in respect of the continuance of potentially problematic members);[36] and (iii) making recommendations to the Board, as applicable, for final determination in respect the foregoing.

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[31] The current CPC Charter includes a narrower provision regarding recusal of the Executive Chairman from discussions of his individual compensation, benefits, and prerequisites.

[32] *See Cede & Co.* v. *Technicolor*, 634 A.2d 345, 360–361 (Del. 1993)

[33] *See Guth* v. *Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939).

[34] For example, individual provisions related to specific types of membership categories and requirements will be replaced by a broader restatement of the RC's responsibilities, which is intended to capture all of the responsibilities enumerated in the delete provisions.

In addition, OCC is modifying certain provisions related to the surveillance of Clearing Members and contingency planning for Clearing Member failures. Specifically, OCC will consolidate these provisions to restate that the RC is responsible for the oversight of the adequacy and effectiveness of OCC's contingency plan for Clearing Member failures, including: (i) Reviewing Clearing Member surveillance criteria; (ii) overseeing the management processes for managing Clearing Members that are subject to closer than normal surveillance or are otherwise in or approaching financial or operational difficulty; (iii) imposing and modifying restrictions and requirements already imposed on Clearing Members in a manner consistent with the By-Laws and Rules;[37] and (iv) making recommendations to the Board in respect of the foregoing.

OCC is making similar amendments to the RC Charter to restate the RC's responsibilities in connection with its oversight of margin and clearing fund requirements. OCC will remove certain existing provisions related to the oversight of margin and clearing fund requirements and replace them with a more high level description that will provide that the RC oversees OCC's processes for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including: (i) Reviewing and modifying OCC's margin formula, the methodologies used for determining margin and clearing fund requirements, and making recommendations to the Board, as applicable, in respect thereof;[38] (ii) evaluating (including increasing) the amount of margin required in respect of any contract or position; (iii) establishing and reviewing guidelines for requiring the deposit of additional margin; and (iv) reviewing and approving determinations about assets eligible for deposit as margin or clearing fund as provided in the By-Laws and Rules.[39] OCC stated that, in general, the amendments are not intended to substantively change the RC's responsibilities in the deleted provisions but will instead replace them with a broader description intended to encompass those responsibilities. OCC will, however, delete an existing RC Charter provision specifically requiring the RC to periodically review the inputs to OCC's margin formula and modify them to the extent it deems such action to be consistent with the protection of OCC, Clearing Members, or the general public. While this specific requirement is being removed from the Charter, OCC believes that the Charter continues to provide an adequate and appropriate oversight framework for the monitoring and development of OCC's margin formula and would provide the RC with continued authority to modify margin formula inputs if it deems such modification to be appropriate.[40]

OCC is also deleting a provision stating that the RC is responsible for making determinations regarding approval of non-U.S. institutions to issue letters of credit as a form of margin asset because this provision does not accurately reflect the RC's responsibilities. While the RC is responsible for overseeing standards used to admit non-U.S. institutions, OCC's President and Executive Chairman have general responsibility for approving financial institutions seeking to become non-U.S. letter of credit banks and that meet the requirements of OCC Rule 604, Interpretation and Policy .01 (with the exception of certain "equivalent country" and "equivalent institution" determinations that are required to be made by the RC pursuant to OCC Rule 604, Interpretations and Policies .01(b)(3) and .01(b)(4)(b)).

Oversight of OCC's Enterprise Risk Management Program and Risk Tolerances

OCC is making amendments to restate and expand upon the RC's responsibility for overseeing OCC's Enterprise Risk Management program. Currently, the RC is responsible for overseeing the structure, staffing and resources of the Enterprise Risk Management program, reviewing periodic reports regarding the Enterprise Risk Management program, and annually reviewing and assessing the overall program. OCC is amending the RC Charter to restate these existing responsibilities and add new responsibilities designed to enhance the risk oversight framework for the Enterprise Risk Management program. Specifically, the amendments will state that the RC is responsible for overseeing OCC's Enterprise Risk Management program, including (in addition to the existing responsibilities noted above), reviewing the systems and procedures that management has developed to manage the risks to OCC's business operations and regularly discussing these systems and procedures with management, reviewing with management the interrelated nature of OCC's risks, and annually approving the Enterprise Risk Management program's goals and objectives. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for the Enterprise Risk Management program.

OCC is also making amendments to restate and expand upon the RC's responsibility for the oversight of OCC's risk appetite and risk tolerances. Currently, the RC Charter provides that the RC is responsible for reviewing and recommending for Board approval the OCC Risk Appetite Statement and reviewing and monitoring OCC's risk profile for consistency with OCC's Risk Appetite Statement. The amendments to the RC Charter will state that, in addition to these responsibilities, the RC will be responsible for reviewing and monitoring determinations regarding appropriate risk tolerances, including reviewing with management on a regular basis management's view of appropriate risk tolerances and assessing whether this view is appropriate, and recommending risk tolerance parameters to the Board. OCC believes that explicitly incorporating these responsibilities into the RC Charter will provide for a more comprehensive oversight framework for OCC's risk appetite and risk tolerances.

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[35] The provision is a restatement of an existing RC responsibility for periodically reviewing and recommending changes to the initial and ongoing requirements for membership and will also replace and encompass the responsibilities in an existing provision of the RC Charter stating that the RC is responsible for recommending to the Board membership requirements for non-broker-dealers.

[36] The provision this amendment will replace and encompass the RC's responsibilities contained in existing RC Charter provisions related to the conducting of hearings for applicants proposed to be disapproved by the RC, the review and approval/disapproval of requests to participate in the Stock Loan Programs, and the approval/disapproval of the continued membership of managed Clearing Members.

[37] The provision will replace and encompass the responsibilities in an existing RC Charter provision related to the RC's responsibility for reviewing and modifying or reversing restrictions or additional requirements imposed on Clearing Members pursuant to OCC Rule 305.

[38] This provision will include language from an existing Charter provision stating that the RC will review methodologies used for calculating margin and clearing fund requirements.

[39] This provision will replace and encompass the RC's responsibilities contained in existing Charter provisions related to the oversight of acceptable margin and clearing fund assets, including the approval of classes of GSE securities for deposit as margin, prescribing intervals for revaluing debt securities deposited as margin of clearing fund, and specifying haircuts for securities provided as margin.

[40] As noted above, the amendments to the RC Charter will provide that the RC is responsible for overseeing the processes established for establishing, monitoring and adjusting margin consistent with the protection of OCC, Clearing Members, or the general public, including reviewing and modifying OCC's margin formula.

Other Oversight Responsibilities

Section I of the RC Charter currently provides that the RC is responsible for the oversight and review of material policies and processes relating to member and other counterparty risk exposure assessments. OCC is amending Section IV to further specify that the RC oversees the adequacy and effectiveness of OCC's processes for setting, monitoring and acting on risk exposures to OCC presented by banks, depositories, financial market utilities and trade sources. OCC believes that the oversight of such risk exposures is critical to ensuring the safety and soundness of OCC and that specifically including this responsibility in the RC Charter will provide for greater clarity and transparency regarding the RC's role in overseeing these risks. Section I of the RC Charter also currently provides that the RC is responsible for the oversight and review of material policies and processes (i) for identifying liquidity risks and (ii) relating to liquidity requirements and the maintenance of financial resources. The amendments to Section IV will further specify that the RC oversees the processes established by OCC for setting, monitoring and managing liquidity needs necessary for OCC to perform its obligations as a systemically important financial market utility. OCC believes that comprehensive oversight of liquidity risks and liquidity risk management is critical to ensuring the safety, soundness, and resilience of OCC and that providing more specificity regarding the RC's responsibilities with respect to liquidity risk will provide for greater clarity and transparency regarding the RC's role in such oversight. In addition, OCC is amending the RC Charter to provide that the RC and management discuss, on a regular basis, the impact on systemic stability that may arise as a result of OCC's actions in responding to an extraordinary market event, including the impending or actual failure of a Clearing Member, and the development of strategies to mitigate these effects. OCC believes it is prudent for management and the RC to engage in regular discussions concerning OCC's actions in extreme market events and the potential impacts on systemic stability given OCC's role as a systemically important financial market utility.

OCC will also elaborate on the statement that the RC will perform the responsibilities delegated to it by the Board under OCC's By-Laws and Rules by specifying that this will include the authorization of the filing of regulatory submissions pursuant to such delegation. Additionally, OCC is making amendments to state that the RC will oversee management's responsibility for handling financial (*i.e.*, credit, market, liquidity and systemic) risks, including the structure, staffing and resources of OCC's Financial Risk Management department. In addition, OCC is making amendments to state that the RC's oversight responsibilities include: (i) Identifying issues relating to strategic, credit, market, operational, liquidity and systemic risks that should be escalated to the Board for final action and (ii) reviewing, approving and reassessing reporting metrics reflecting the risks for which the RC has oversight.

Further, the amendments will specify that the RC oversees OCC's model risk management process, policies and controls, including: (i) Overseeing model risk governance; (ii) reviewing the findings of any third party engaged by management to evaluate OCC's risk models; and (iii) annually reviewing and approving the Model Validation Plan and receiving periodic reports thereunder. Moreover, the amendments provide that the RC is responsible for reviewing the results of any audits (internal and external), regulatory examinations and supervisory examination reports as to significant risk items or any other matter relating to the areas that the RC oversees, as well as management's responses pertaining to matters that are subject to the oversight of the RC.

(c) Administrative Changes

Consistent with the GNC Charter and AC Charter, OCC is amending the RC Charter to eliminate provisions under which the RC Chair attends the year-end CPC meeting to discuss the performance and compensation levels of the CRO. Rather, the RC, in consultation with the Executive Chairman, will review the performance of the Enterprise Risk Management and Model Validation programs as well as the CRO and determine whether to accept or modify the Executive Chairman's recommendations with respect to the performance assessment and annual compensation for the CRO.[41] This change reflects the reporting of the CRO to the Executive Chairman for administrative purposes, while preserving functional reporting to the Committee.

Further, the amendments will confirm that the RC has the responsibility for ratifying, modifying, or reversing action taken by OCC officers that have been delegated authority to consider requests by Clearing Members to expand clearing activities to include additional account types and/or products. Moreover, OCC is amending the RC Charter to clarify that the RC has the authority to authorize the filing of a regulatory submission pursuant to authority delegated to it by the Board.

(7) Amendments to the Governance and Nominating Committee Charter

OCC is amending the GNC Charter to reflect the elimination of term limits for Public Directors as discussed above and to state that attendance of GNC meetings by telephone is discouraged because OCC believes the Committee may be less likely to have the kind of interaction that leads to fully informed discussions and decisions than if Committee members were to meet in person. OCC will also delete a provision stating that a designated officer of management shall serve to assist the Committee and act as a liaison between staff and the Committee because OCC believes based on its experience that designating a formal role for a liaison was unnecessary. Deleting this requirement will also maintain uniformity across all Committee Charters, as no other Committee has a formally designated liaison.

OCC is also amending the GNC Charter to specify that the Chair (or the Chair's designee) shall consult with the Corporate Secretary, in addition to management, to prepare an agenda in advance of each GNC meeting as the Corporate Secretary is responsible for coordinating the preparation and distribution of Board and Board Committee meeting agendas. In addition, OCC is making non-substantive drafting changes regarding: (i) The numbering of certain provisions in Section I of the GNC Charter and (ii) the requirements for GNC Committee reports to the Board in Section II of the Charter.

(8) Amendments to the Technology Committee Charter

OCC is amending its TC Charter to require that the TC meet regularly, and no less than once annually, with OCC's Chief Security Officer ("CSO") and to provide that the CSO is authorized to communicate directly with the Chair of the TC in between meetings of the

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[41] This change is consistent with comparable changes to the AC Charter with respect to the annual compensation of the CAE and CCO, respectively.

Committee in order to strengthen the autonomy and independence of the CSO role at OCC. OCC is also amending the TC Charter to provide that the TC shall make such reports to the Board as deemed necessary or advisable. This change promotes effective communication between the TC and the Board is in line with requirements in other Committee Charters.

OCC is also making non-substantive amendments to Section III of the TC Charter to eliminate a provision that referenced approval of non-audit services, which appeared to be an inadvertent carry-over from the Audit Committee Charter and to Section IV of the Charter to change the term "the Company" to "OCC" and "Board of Directors" to "Board."

II. Discussion

Section 19(b)(2)(C) of the Act[42] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the rule change, as proposed, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of a clearing agency be designed, in general, to protect investors and the public interest.[43] Further, Rule 17Ad–22(d)(8) of the Act requires that a clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[44]

OCC's proposal relates to OCC's governance arrangements. The proposal comprises changes to OCC's Certificate of Incorporation, By-Laws and Rules, Amended and Restated Stockholders Agreement, Board Charter, AC Charter, CPC Charter, RC Charter, GNC Charter, TC Charter, and Fitness Standards (collectively, "Governing Documents"), as described in greater detail above in section I, Description of the Proposed Rule Change. These changes fall broadly into the following categories: (1) Board and Committee composition; (2) Committee authority and procedures; (3) Board and Committee meeting management; (4) Board and Committee responsibilities and functions; and (5) administrative textual changes.

(1) Board and Committee Composition

OCC will revise its By-Laws, Amended and Restated Stockholders Agreement, and Board Charter to reduce the number of Management Directors on its Board from two to one and remove references to the Management Vice Chairman. OCC stated that the position of the second Management Director, which is meant to be filled by the Management Vice Chairman, recently has been vacant. According to OCC, all of the Management Vice Chairman's obligations have been appropriately managed in the absence of a Management Vice Chairman. Further, OCC historically operated with only one Management Director until 2013.

OCC will also amend its By-Laws, AC Charter, and CPC Charter to require that the AC and the CPC each be chaired by Public Directors. The role of Public Director Chairs is to contribute to the objectivity and independence of the AC and CPC. The Commission believes that the changes to OCC's governing documents facilitating inclusion of the perspectives provided by OCC's Public Directors should support the protection of the public interest because such Public Directors are not affiliated with and therefore should not have conflicts obligating them to represent the views of any national securities exchange, association, broker, or dealer. Further, OCC is revising certain Governing Documents, as described in section I above, to remove term limits for Public Directors in recognition of the time necessary to develop the knowledge and understanding of OCC's business and because OCC believes that such directors provide significant value in the governance process. Therefore, the Commission finds that the changes described in section I above relating to the removal of the second Management Director, requiring that the AC and CPC each be chaired by Public Directors, and the removal of term limits for Public Directors, are consistent with the requirement under Section 17A(b)(3)(F) of the Act that the rules of a clearing agency be designed, among other things, to protect the public interest.[45]

To enhance the independence of the oversight of OCC's control functions, OCC will revise the By-Laws and the AC Charter to provide that no Management Director may serve on the AC. Additionally, OCC will revise the By-Laws and RC Charter to require that at least one Exchange Director serve on the RC and to reduce the minimum number of Member Directors on the RC. These changes to the RC composition are intended to incorporate the expertise and perspective of OCC's owner Exchanges while allowing for greater flexibility in the selection of directors with the requisite skill and expertise to serve on the RC. The Commission believes that independence and expertise are important in the composition of the committees responsible for overseeing OCC's control and risk management functions. Therefore, the Commission finds that the changes to OCC's governing documents described above providing that no Management Director may serve on the AC, requiring at least one Exchange Director to serve on the RC, and reducing the minimum number of Member Directors on the RC, are consistent with the requirement in Rule 17Ad–22(d)(8)[46] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies and to promote the effectiveness of the clearing agency's risk management procedures.

As described in section I above, OCC intends to describe more clearly in its By-Laws, Amended and Restated Stockholders Agreement, Board Charter, and Fitness Standards the process for nominating Member Directors, Public Directors, the Executive Chairman, and the Member Vice Chairman. These changes are designed to provide for a consistent description across OCC's Governing Documents, as applicable, of the nomination process and the Board's participation in the process. The Commission finds that the changes described above to OCC's Governing Documents regarding the process for nominating Member Directors, Public Directors, and Executive Chairman, and the Member Vice Chairman are consistent with the requirement in Rule 17Ad–22(d)(8)[47] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.

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[42] 15 U.S.C. 78s(b)(2)(C).

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] 17 CFR 240.17Ad–22(d)(8).

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] 17 CFR 240.17Ad–22(d)(8).

[47] *Id.*

Additionally, OCC will make changes to certain Governing Documents, as described in section I above, related to the composition of the RC. Specifically, the changes will provide that the RC shall consist of the Executive Chairman, at least one Exchange Director, at least one Member Director, and at least one Public Director. In addition, the changes will provide for the election of the RC Chair by the RC members in the event that the Board does not designate a Chair. The Commission finds that changes to OCC's Governing Documents to clearly provide for the composition of the RC and for eventualities such as the failure of OCC's Board to designate the Chair of the RC, are consistent with the requirement in Rule 17Ad–22(d)(8)[48] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to support the objectives of owners and participants and to promote the effectiveness of the clearing agency's risk management procedures.

As described in section I(7) above, OCC will also remove the requirement for a management liaison to the GNC from its GNC Charter because OCC believes that no such position is necessary based on its experience and because no other Board Committee has a formal management liaison. The Commission finds that revising the design of a clearing agency's policies and procedures related to its governance arrangements by removing an unnecessary position from the composition requirements of its governing bodies is consistent with the requirement in Rule 17Ad–22(d)(8)[49] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies and to support the objectives of owners and participants.

(2) Committee Authority and Procedures

As described in section I(3)(e) above, OCC will remove language from each Board Committee's Charter regarding the authority of the Chair of each Board Committee to act on behalf of its respective Board Committee in situations in which immediate action is required and convening a Board Committee meeting is impractical. OCC stated that it has been able to convene committee meetings when necessary and that the change will promote fully informed, deliberate decision making. Removing the authority of a Chair to act on behalf of a committee in this manner should support the incorporation of various stakeholder perspectives, which may include OCC's owners and participants as well as the public. The Commission finds the changes to each Board Committee's Charter to remove the authority of each Chair to act on behalf of its respective Board Committee, as described in greater detail in section I(3)(e) above, are consistent with the requirement in Rule 17Ad–22(d)(8)[50] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to support the objectives of owners and participants, because such changes should support the incorporation of stakeholder perspectives that may include OCC's owners and participants.

OCC will also make changes to certain Governing Documents that are intended to enhance generally the quality of its governance arrangements. As described in section I(3)(e) above, changes to each Committee's Charter will allow each Committee to hire specialists without prior Board authorization, and have access to all books, records, facilities and personnel of OCC. As described in greater detail in sections I(4), I(5), and I(8) above, the charters of the AC, TC, and GNC will be revised to provide for more reporting to the full Board, and the CPC Charter will be revised to require the CPC to provide its full minutes to the Board. The Commission believes that providing the authority to hire specialists should enhance committee independence, while enhanced reporting requirements should support Board oversight. The Commission finds that the changes to the Committee Charters (i) to provide authority for Board Committees to hire specialists and access OCC books, records, facilities and personnel, and (ii) to provide for enhanced reporting requirements to the Board are consistent with the requirement of Rule 17Ad–22(d)(8)[51] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements of Section 17A of the Act applicable to clearing agencies.

Revisions to the RC Charter, described in greater detail in section I(6)(a) above, will permit the RC to delegate authority to the Management Committee and Enterprise Risk Management Committee while specifying that the RC is responsible for ratifying the actions taken under such delegated authority. Additionally, revisions to the RC Charter, described in section I(6)(c) above, will confirm the RC's authority to file certain regulatory submissions pursuant to delegations of authority from the Board. The Commission believes that the delegation of day-to-day risk management and implementation of RC-approved proposals may better support the clearing agency's risk management procedures by allowing the RC to better utilize its time and expertise. Therefore, the Commission finds that the changes to the RC Charter to allow the RC to delegate authority while requiring RC ratification of delegated actions and to confirm the RC's authority to authorize the filing of certain regulatory submissions pursuant to delegated authority from the Board, as described in sections I(6)(a) and (c) above, are consistent with the requirement in Rule 17Ad–22(d)(8)[52] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to promote the effectiveness of the clearing agency's risk management procedures.

(3) Board and Committee Meeting Management

OCC will remove from the RC Charter certain mandatory recusal requirements designed to apply to Member Directors of the RC as described in section I(6)(a) above. OCC makes available on its Web site its Code of Conduct for OCC Directors, which addresses the identification and management of conflicts of interest.[53] OCC believes that this specific recusal requirement contained in the RC charter is unnecessary in light of the existing requirements under Delaware law and OCC's Code of Conduct for OCC Directors. The Commission finds that revising OCC's governing documents by incorporating the identification and management of conflicts of interest in a single policy or procedure related to the governance of a clearing agency is consistent with the requirement in Rule 17Ad–22(d)(8)[54] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements of Section 17A of the Act applicable to clearing agencies because such revised documents will continue to include requirements for the identification and management of director conflicts of interest.

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[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] OCC has not filed its Code of Conduct for OCC Directors with the Commission as a rule under Section 19 of the Act.

OCC also will make several revisions the Board Charter and Committee Charters regarding the meeting structure and frequency of its Board and Committees. As described in sections I(3)(a) and I(3)(e) above, OCC will make revisions to the Board Charter and Committee Charters intended to enhance the framework for holding and recording executive sessions of the Board and Committees. The amended Board Charter will require the Executive Chairman, in consultation with the Corporate Secretary, to establish an agenda in advance of each Board meeting, and revisions to the GNC Charter will similarly require the GNC Chair, in consultation with the Corporate Secretary, to establish an agenda in advance of each GNC meeting. Revisions to the Board Charter and Committee Charters will discourage attendance by telephone at Board and Committee meetings to promote fully informed discussions and decisions. In addition, OCC will amend the Board Charter to authorize the Board to hold additional meetings, as it deems appropriate. Finally, as described in sections I(5)(a) and I(6)(a), respectively, OCC will amend the CPC Charter to specify that the CPC will meet four times per year, as opposed to in advance of each Board meeting, and will amend the RC Charter to specify that the RC will meet six, as opposed to seven, times per year. The Commission finds that changes to OCC's governing documents to clearly describe Board and Committee meeting practices and require the Board and Committees to hold and record executive sessions as described in this paragraph are consistent with the requirement in Rule 17Ad–22(d)(8)[55] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements of Section 17A of the Act.

(4) Board and Committee Responsibilities and Functions

As described above, OCC is amending the Board Charter and Committee Charters regarding the functions and responsibilities of the Board and its Committees. The revised Board Charter will describe the Board's responsibilities in light of OCC's role as a systemically important financial market utility, as detailed in section I(3)(b) above. As described in section I(3)(c) above, amendments to the Board Charter will require the Board to review its Charter, OCC's Corporate Governance Principles, and Fitness Standards annually. Additional revisions to the Board Charter are intended to specify that, in addition to overseeing major capital expenditures and approving the annual budget and corporate plan, the Board is responsible for reviewing and approving OCC's financial objectives and strategies, capital plan and capital structure, OCC's fee structure, and major corporate plans and actions, as well as periodically reviewing the types and amounts of insurance coverage available in light of OCC's clearing operations. The Commission finds that changes to OCC's Board Charter designed to document OCC's recognition of its responsibilities as a systemically important financial market utility, to require the Board to review certain OCC governing documents annually, and to specify further the Board's responsibilities are consistent with the requirement in Rule 17Ad–22(d)(8)[56] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements of Section 17A of the Act applicable to clearing agencies.

As described in section I(3)(e) above, OCC is amending the Board Charter and Committee Charters to require the Board and the Committees to perform annual self-evaluations, and require the Board to evaluate individual directors annually. The Commission finds that changes to OCC's Board Charter and Committee Charters to require OCC's governing bodies to perform such evaluations should support the effectiveness of OCC's governing bodies and thus are consistent with the requirement in Rule 17Ad–22(d)(8)[57] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements of Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.

Revisions to the Board Charter are intended to make the RC, as opposed to the Board, responsible for overseeing OCC's framework for managing strategic, financial, and operational risk, with continued oversight from the Board. OCC stated that this function is already performed by the RC (as reflected in the RC Charter). The Commission finds that changes to the Board and RC Charters intended to clarify the RC's responsibility for the oversight of the risk management matters, as described in section I(3)(b) above, are consistent with the requirement in Rule 17Ad–22(d)(8)[58] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to promote the effectiveness of the clearing agency's risk management procedures.

OCC will revise the AC, RC, and TC Charters to clarify the reporting lines of certain officers to their respective Board Committees. In addition, the revised Committee Charters, among other things, will require that the AC meets regularly, but no less than annually with the CFO, CAE, and CCO; that the RC meets regularly, but no less than annually with the CRO; and that the TC meets regularly, but no less than annually with the CSO. Additionally, the revised Committee Charters will authorize the officers listed above, other than the CFO, to communicate directly with the Chairs of their respective Board Committees. The Commission finds that these changes to OCC's Committee Charters to clarify reporting lines of officers responsible for OCC's control and risk management functions, as described in sections I(4)(a), I(6)(a), and I(8) above, are consistent with the requirement in Rule 17Ad–22(d)(8)[59] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to promote the effectiveness of the clearing agency's risk management procedures.

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[54] 17 CFR 240.17Ad–22(d)(8).

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

As noted above, OCC will revise certain Committee Charters regarding the reporting lines of the CRO, CAE, and CCO. Consistent with these changes, OCC will also revise the RC and AC Charters such that the RC will set compensation for the CRO, and the AC will set compensation for the CAE and CCO. Relatedly, OCC will amend the CPC Charter to remove a requirement that the CPC meet with the RC Chair or AC Chair in executive session regarding the compensation of the CRO, CAE, or CCO. As described above in sections I(4)(b), I(5)(a), and I(6)(c) above, these changes are intended to underscore the independence of the CRO, CAE, and CCO. The Commission finds that these changes are consistent with the requirement in Rule 17Ad–22(d)(8)[60] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to promote the effectiveness of the clearing agency's risk management procedures.

OCC is amending the AC Charter regarding the AC's responsibilities. The amended charter, among other things, will restate and revise the AC's responsibility for oversight of the external auditor and financial reporting; the Internal Audit department, Compliance department, and compliance related matters; and OCC's Chief Audit Executive and Chief Compliance Officer.

As described in greater detail in section I(4)(b) above, the amendments are intended to reinforce and expand upon the AC's oversight responsibilities, which should support OCC's control framework. The Commission believes that the governance of OCC's control framework is important to OCC's overall functioning. Therefore, the Commission finds that the changes to the AC Charter to restate and revise the AC's responsibility for oversight of OCC's control functions and the officers responsible for managing such functions, as described above, are consistent with the requirement in Rule 17Ad–22(d)(8)[61] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to promote the effectiveness of the clearing agency's risk management procedures.

OCC is amending the CPC Charter regarding the CPC's responsibilities. Under the revised CPC Charter, among other things, the CPC will be responsible for assisting the Board with oversight of OCC's overall performance as well as capital and leadership planning, approving the goals and objectives of the Executive Chairman, and reviewing the compensation of the Management Committee. The amended CPC Charter will restate and revise the CPC's responsibility for oversight of OCC's Capital Plan; human resources and compensation programs; and employee benefit programs, including the monitoring of the Administrative Committee.

Under the revised CPC Charter, the CPC will also be responsible for providing periodic updates to the Board regarding CPC actions with respect to compensation, retirement, and employee welfare plans, financial position and performance of such plans, and adherence to investment guidelines. The Commission finds that changes to OCC's CPC Charter as described in detail in section I(5)(b) above are consistent with the requirement in Rule 17Ad–22(d)(8)[62] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to fulfill the public interest requirements of Section 17A of the Act applicable to clearing agencies, among other things, to support the objectives of owners and participants.

OCC is amending the RC Charter to clarify and expand the RC's responsibilities. Under the revised RC Charter, the RC will be responsible for coordinating with the other Committees to achieve comprehensive oversight of OCC's risk-related matters, among other things. The amended RC Charter will restate and revise the RC's responsibility for oversight of membership and margin requirements; OCC's Enterprise Risk Management program and risk tolerances; contingency planning and model risk management; the process for managing exposures to banks, depositories, financial market utilities, and trade sources as well as the process for managing liquidity needs; and management's handling of the Financial Risk Management group, review of OCC's risk reporting metrics, and identification of risk issues for escalation to the Board.

The amended RC Charter will also restate and revise the RC's responsibility for discussing, with management, the impact on systemic stability that could arise out of OCC's responses to extraordinary market events. The Commission finds that the changes to the RC Charter as described in detail in section I(5)(b) above clarify and expand the RC's responsibilities for coordination of risk-related matters, oversight of membership requirements and risk management, and discussion of the potential impact of OCC's responses to extraordinary market events, and are consistent with the requirement in Rule 17Ad–22(d)(8)[63] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to promote the effectiveness of the clearing agency's risk management procedures.

(5) Administrative Textual Changes

OCC will make a number of textual changes to its governing documents that are not intended to change the meaning of those documents. Such changes include the following:

- As described in section I(2)(c) above, OCC will consolidate the current By-Law provisions describing its Board Committees. OCC will also add By-Law provisions to describe those Board Committees not currently described in the By-Laws.
- As described in section I(3)(a) above, OCC will revise the Board Charter, consistent with existing rules, to reflect an increase in the number of Public Directors on OCC's Board from three to five. As described in section I(3)(b) above, OCC will replace language in the Board Charter concerning the Board's obligations that duplicates language currently in OCC's By-Laws with a general statement that the Board will perform functions, as it believes necessary, or as prescribed by rules or regulation, and will reorganize section IV of the Board Charter. As described in section I(3)(c) above, OCC will remove the list of stakeholders from the introductory language of the Board Charter, and will revise the language throughout the charter to recognize the TC.
- As described in greater detail in section I(3)(d) above, OCC will remove, from its Fitness Standards, descriptions of the categories of directors represented on the Board because they are maintained in Article III of the By-Laws.

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[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

- Across all of the charters, OCC will replace references to the "Performance Committee" and the "Governance Committee" with references to the "Compensation and Performance Committee" and "Governance and Nominating Committee," respectively.
- In certain Committee Charters, OCC will add broad statements that encompass and replace current language concerning the respective Committee's functions and responsibilities. The AC Charter will state that the AC oversees internal controls and compliance. OCC will remove language regarding review of the Corporate Plan and administration of compensation plans from the CPC charter. OCC will broaden the RC Charter description of the RC's oversight of the clearing membership framework.
- As described in section I(4)(a), OCC will replace the term "independent accountant" with "external auditor" in the AC Charter. As described in section I(5)(a), OCC will reword the delegation of authority to the Administrative Committee in the CPC Charter. As described in section I(7), OCC will renumber sections in the first paragraph of the GNC Charter.
- As described in section I(6)(b), OCC will remove language from the RC Charter regarding the approval of non-U.S. institutions to issue letters of credit because this language contradicts OCC's By-Laws. OCC will remove language from the TC Charter related to audit because that language was inadvertently carried-over from the AC Charter.

The Commission believes that the foregoing changes clarify the language of OCC's governing documents. The Commission finds that changes designed to clarify the language of a clearing agency's governing documents are consistent with the requirement in Rule 17Ad–22(d)(8)[64] that each registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent, among other things, to support the objectives of owners and participants.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Act, and in particular, with the requirements of Section 17A of the Act and the rules and regulations thereunder.[65]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[66] that the proposed rule change (SR–OCC–2016–002), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22792 Filed 9–21–16; 8:45 am]

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[64] *Id.*

[65] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78s(b)(2).

[67] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78859; File No. SR–NYSEArca–2016–84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the Global Currency Gold Fund Under NYSE Arca Equities Rule 8.201, and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 2

September 16, 2016.

I. Introduction

On June 1, 2016, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Global Currency Gold Fund under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on June 21, 2016.[3] On July 27, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 19, 2016.[4] On July 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded in its entirety the proposed rule change as originally filed. On September 8, 2016, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded in its entirety Amendment No. 1 to the proposed rule change.[5] The Commission has received no comments on the proposal.

The Commission is publishing this order to solicit comments on Amendment No. 2 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal, as Modified by Amendment No. 2

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The Exchange has prepared summaries, set forth in sections A, B, C, and D below, of the most significant parts of such statements.

A. The Exchange's Statement of the Purpose of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Shares") of the Long Dollar Gold Trust (the "Fund"), a series of the World Currency Gold Trust ("Trust"), under NYSE Arca Equities Rule 8.201.[7] Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[8]

The Fund will not be registered as an investment company under the Investment Company Act of 1940[9] and is not required to register under such act.

The Sponsor of the Fund and the Trust will be WGC USA Asset Management Company, LLC (the "Sponsor").[10] BNY Mellon Asset

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78075 (June 15, 2016), 81 FR 40381.

[4] *See* Securities Exchange Act Release No. 78425, 81 FR 50759 (August 2, 2016).

[5] Amendments No. 1 and No. 2 are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2016-84/nysearca201684.shtml.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] On August 30, 2016, the Trust filed with the Commission Amendment No. 3 to its registration statement on Form S–1 under the Securities Act of 1933 ("1933 Act") relating to the Fund (File No. 333–206640) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. This Amendment No. 2 to SR–NYSEArca–2016–84 replaces SR–NYSEArca–2016–84 as originally filed and Amendment No. 1 thereto, and supersedes such filings in their entirety. The name of the Fund stated in such filings—Global Currency Gold Fund—is replaced by Long Dollar Gold Trust.

[8] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[9] 15 U.S.C. 80a–1.

[10] The Trust will be a Delaware statutory trust consisting of multiple series, each of which will

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Servicing, a division of The Bank of New York Mellon ("BNYM"), will be the Fund's administrator ("Administrator") and transfer agent ("Transfer Agent") and will not be affiliated with the Trust, the Fund or the Sponsor. BNYM will also serve as the custodian of the Fund's cash, if any. HSBC Bank plc will be the custodian (the "Custodian") of the Fund's Gold (defined below).

The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rules 5.2(j)(5) and 8.201 of other precious metals and gold-based commodity trusts, including the Merk Gold Trust;[11] ETFS Gold Trust,[12] ETFS Platinum Trust[13] and ETFS Palladium Trust (collectively, the "ETFS Trusts");[14] APMEX Physical-1 oz. Gold Redeemable Trust;[15] Sprott Gold Trust;[16] SPDR Gold Trust (formerly, streetTRACKS Gold Trust); iShares Silver Trust;[17] and iShares COMEX Gold Trust.[18] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE")[19] and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC.[20] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[21]

Operation of the Fund

Gold bullion typically is priced and traded throughout the world in U.S. dollars. The Fund has been established as an alternative to traditional dollar-based gold investing. Although investors will purchase shares of the Fund with U.S. dollars, the Fund is designed to provide investors with the economic effect of holding gold in terms of a specific basket of major, non-U.S. currencies, such as the euro, Japanese yen and British pound (each, a "Reference Currency"), rather than the U.S. dollar. Specifically, the Fund will seek to track the performance of the Solactive GLD® Long USD Gold Index, less Fund expenses. The Solactive GLD® Long USD Gold Index, or the "Index", represents the daily performance of a long position in physical gold and a short position in the FX Basket[22] comprised of each of the Reference Currencies.[23] The Index is designed to measure daily gold bullion returns as though an investor had invested in Gold in terms of the FX Basket comprised of the Reference Currencies reflected in the Index. (The Index is described in more detail below under the heading "Description of the Index".)

The U.S. dollar value of an investment in Shares of the Fund would therefore be expected to increase when both the price of Gold goes up and the value of the U.S. dollar increases against the value of the Reference Currencies comprising the FX Basket (as weighted in the Index). Conversely, the U.S. dollar value of an investment would be expected to decrease when the price of Gold goes down and the value of the U.S. dollar decreases against the value of the Reference Currencies comprising the FX Basket (as weighted in the Index). If Gold increases and the value of the U.S. dollar decreases against the value of the Reference Currencies comprising the FX Basket, or vice versa, the net impact of these changes will determine the value of the Shares of the Fund on a daily basis.[24]

The Fund is a passive investment vehicle and is designed to track the performance of the Index regardless of: (i) The value of Gold or any Reference Currency; (ii) market conditions; and (iii) whether the Index is increasing or decreasing in value. The Fund's holdings generally will consist entirely of Gold. Substantially all of the Fund's Gold holdings will be delivered by Authorized Participants (defined below) in exchange for Fund Shares. The Fund will not hold any of the Reference Currencies. The Fund generally will not hold U.S. dollars (except from time to time in very limited amounts to pay expenses). The Fund's Gold holdings will not be managed and the Fund will not have any investment discretion.

The Fund's net asset value ("NAV") will go up or down each "Business Day" based primarily on two factors.[25] The first is the change in the price of Gold measured in U.S. dollars from the prior Business Day. This drives the value of the Fund's Gold holdings measured in U.S. dollars up (as Gold prices increase) or down (as Gold prices fall). The second is the change in the value of the Reference Currencies comprising the FX Basket against the U.S. dollar from the prior Business Day. This drives the value of the Fund's Gold holdings measured in the Reference Currencies comprising the FX Basket up (when the value of the U.S. dollar against the Reference Currencies comprising the FX Basket increases) or down (when the value of the U.S. dollar against the Reference Currencies comprising the FX Basket declines). The value of Gold and the Reference Currencies comprising the FX Basket are based on publicly available, transparent prices—for Gold, the LBMA Gold Price AM (defined below), for currencies, the WMR Fix.[26]

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issue common units of beneficial interest, which represent units of fractional undivided beneficial interest in and ownership of such series. The term of the Trust and each series will be perpetual (unless terminated earlier in certain circumstances). The sole trustee of the Trust will be Delaware Trust Company ("Trustee").

[11] Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137).

[12] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[13] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[14] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[15] Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

[16] Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

[17] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust).

[18] *See* Securities Exchange Act Release No.56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the street TRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[19] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of street TRACKS Gold Trust on NYSE).

[20] *See* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[21] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[22] "FX Basket" means the basket of Reference Currencies with weighting determined by the Index.

[23] "Gold" means gold bullion meeting the requirements of London Good Delivery Standards. London Good Delivery Standards are the specifications for weight dimensions, fineness (or purity), identifying marks and appearance set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the London Bullion Markets Association ("LBMA").

[24] For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, *see, e.g.*, Securities Exchange Act Release Nos. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order approving Exchange listing and trading of the ETFS Gold Trust); and 66627 (March 20, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSE Arca–2012–18) (order approving Exchange listing and trading of the APMEX Physical-1 oz. Gold Redeemable Trust).

[25] A Business Day with respect to the Fund is any day the Exchange is open for trading.

[26] The WMR Fix is the World Markets Company plc foreign exchange benchmark rate.

Because the Fund generally will hold only Gold bullion (and not U.S. dollars or the Reference Currencies), the economic impact of changes to the value of the Reference Currencies against the U.S. dollar from day to day is reflected in the Fund by moving an amount of Gold ounces of equivalent value in or out of the Fund. Therefore, the Fund will seek to track the performance of the Index by entering into a transaction each Index Business Day with the "Gold Delivery Provider" pursuant to which Gold is moved in or out of the Fund.[27] The terms of this transaction are set forth in a written contract between the Fund and the Gold Delivery Provider referred to as the "Gold Delivery Agreement." Pursuant to the terms of the Gold Delivery Agreement, the Fund will deliver Gold to, or receive Gold from, the Gold Delivery Provider each Index Business Day. The amount of Gold transferred will be equivalent to the Fund's profit or loss as if the Fund had exchanged the Reference Currencies comprising the FX Basket, in the proportion in which they are reflected in the Index, for U.S. dollars in an amount equal to the Fund's declared holdings of Gold on such day. If there is a currency gain (*i.e.,* the value of the U.S. dollar against the Reference Currencies comprising the FX Basket increases), the Fund will receive Gold. If there is a currency loss (*i.e.,* the value of the U.S. dollar against the Reference Currencies comprising the FX Basket decreases), the Fund will deliver Gold.[28] In this manner, the value of the Gold held by the Fund will be adjusted to reflect the daily change in the value of the Reference Currencies comprising the FX Basket against the U.S. dollar. The Gold Delivery Agreement requires Gold ounces equal to the value of the Gold Delivery Amount to be delivered to the custody account of the Fund or Gold Delivery Provider, as applicable. The fee that the Fund pays the Gold Delivery Provider for its services under the Gold Delivery Agreement will be accrued daily and reflected in the calculation of the Gold Delivery Amount.

The Fund does not intend to enter into any other Gold transactions other than with the Gold Delivery Provider as described in the Gold Delivery Agreement (except that the Fund may sell Gold to cover Fund expenses), and the Fund does not intend to hold any Reference Currency or enter into any currency transactions.

Description of the Index

The Index is maintained and calculated by a third-party data and index provider, Solactive AG (the "Index Provider"). The Index Provider will license the Index to the Sponsor for use in connection with the Trust and the Fund. The Index Provider is not affiliated with the Trust, the Fund, the Sponsor, the trustee for the Trust, the Administrator, the Transfer Agent, the Custodian or the Gold Delivery Provider. The Index Provider is not affiliated with a broker-dealer. The Index Provider has adopted policies and procedures designed to prevent the spread of material non-public information about the Index.

The description of the strategy and methodology underlying the Index, which will be identified and described in the Registration Statement, is based on rules formulated by the Index Provider (the "Index Rules"). The Index Rules, which will be described in the Registration Statement, will govern the calculation and constitution of the Index and other decisions and actions related to its maintenance. The Index is described as a "notional" or "synthetic" portfolio or strategy because there is no actual portfolio of assets to which any person is entitled or in which any person has any ownership interest. The Index references certain assets (*i.e.,* Gold and the Reference Currencies comprising the FX Basket), the performance of which will be used as a reference point for calculating the daily performance of the Index (the "Index Level"). The Index seeks to track the daily performance of a long position in physical Gold and a short position in the Reference Currencies comprising the FX Basket (as weighted in the Index). If the Gold Price (as defined below) increases and the Reference Currencies comprising the FX Basket depreciate against the U.S. dollar, the Index Level will increase. Conversely, if the Gold Price decreases and the Reference Currencies comprising the FX Basket appreciate against the U.S. dollar, the Index Level will decrease. In certain cases, the appreciation of the Gold Price or the depreciation of the FX Basket comprised of the Reference Currencies may be offset by the appreciation of the FX Basket comprised of the Reference Currencies or the depreciation of the Gold Price, as applicable. The net impact of these changes determines the Index Level on a daily basis.

The Index values Gold on a daily basis using the "Gold Price." The Gold Price generally is the LBMA Gold Price AM. The "LBMA Gold Price" means the price per troy ounce of Gold stated in U.S. dollars as set via an electronic auction process run twice daily at 10:30 a.m. and 3:00 p.m., London time each Business Day as calculated and administered by ICE Benchmark Administration Limited ("IBA") and published by LBMA on its Web site. The "LBMA Gold Price AM" is the 10:30 a.m. LBMA Gold Price. IBA, an independent specialist benchmark administrator, provides the price platform, methodology and the overall administration and governance for the LBMA Gold Price.

As noted herein, the term "Reference Currencies" refers to the following non-U.S. currencies: The euro, Japanese yen, British pound sterling, Canadian dollar, Swedish krona and Swiss franc. Each Reference Currency comprising the FX Basket is expressed in terms of a number of foreign currency units relative to one U.S. dollar (*e.g.,* a number of Japanese yen per one U.S. dollar) or in terms of a number of U.S. dollars per one unit of the reference currency (*e.g.,* a number of U.S. dollars per one euro).

The Index references European Union euro ("euro" or "EUR"), the Japanese yen ("JPY" or yen"), the British pound sterling ("GBP"), the Swiss franc ("CHF"), the Canadian dollar ("CAD") and the Swedish Krona ("SEK") (each of which is measured against U.S. dollars). The weightings of each currency referenced are as follows: Euro (57.6%), yen (13.6%), GBP (11.9%), CAD (9.1%), SEK (4.2%) and CHF (3.6%).

Reference Currency Index values generally are calculated using the published WM/Reuters ("WMR")[29] Spot Rate ("Spot Rate") as of 9:00 a.m., London time associated with each Reference Currency.[30] The "Spot Rate"

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[27] The Gold Delivery Provider, Merrill Lynch International, is a company incorporated in England and Wales and regulated by the Prudential Regulation Authority (the "PRA") and the Financial Conduct Authority (the "FCA"). The Gold Delivery Provider will not be affiliated with the Trust, the Fund, the Sponsor, the Trustee, the Administrator, the Transfer Agent, the Custodian or the Index Provider (defined below).

[28] If the applicable currency exchange rates did not change from one day to the next, or the net impact of such changes was zero, then the Fund would neither deliver nor receive Gold pursuant to the Gold Delivery Agreement.

[29] WMR provides both intraday and closing fixes for currency spot rates, forward contracts and non-deliverable forward contracts. WMR rates are widely utilized by financial institutions in evaluating global markets.

[30] The Spot Rate is calculated by WMR using observable data from arms-length transactions between buyers and sellers in the applicable currency market.

The World Markets Company plc ("WM") provides an exchange rate service that publishes Spot Rates at fixed times throughout the global trading day. WM does not use a panel or polling solicitation process to obtain underlying data in the benchmark calculation process. WM uses transactional data to set "Trade Rates," reflecting data from actual transactions entered into on an arm's length basis between buyers and sellers in

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is the rate at which a Reference Currency comprising the FX Basket can be exchanged for U.S. dollars on an immediate basis, subject to the applicable settlement cycle. Thus, if an investor wanted to convert U.S. dollars into euros, the investor could enter into a spot transaction at the Spot Rate (subject to the bid/ask) and would receive euros in a number of days, depending on the settlement cycle of that currency. Generally, the settlement of a "spot" transaction is two currency business days (except in the case of Canadian dollars, which settle on the next business day). The following table sets forth the Reference Currencies comprising the FX Basket (each of which is measured against U.S. dollars), the applicable "Reuters Page" for each Spot Rate referenced by the Index and the market convention for quoting such currency.

Reference currency	Reuters page	Market convention for quotation
EUR/USD	USDEURFIX=WM	Number of USD per one EUR.
USD/JPY	USDJPYFIX=WM	Number of JPY per one USD.
GBP/USD	USDGBPFIX=WM	Number of USD per one GBP.
USD/CAD	USDCADFIX=WM	Number of CAD per one USD.
USD/SEK	USDSEKFIX=WM	Number of SEK per one USD.
USD/CHF	USDCHFFIX=WM	Number of CHF per one USD.

Settlement in most spot currency transactions is two currency business days after the trade date. A "spot-next trade" effectively extends the spot settlement cycle by one Business Day (*i.e.,* the "next" day) and a "spot-next forward point" represents the difference in price between a spot transaction and a spot-next trade. Combining a spot-next trade with a spot transaction allows for exposure to the currency without taking delivery. By entering on each Index Business Day (as defined below) into notional spot-next trades that are closed the next Index Business Day against spot transactions, the Index is exposed to the Reference Currencies comprising the FX Basket without having to take delivery of these currencies. The Index approximates the cost of entering into a spot-next trade by linearly interpolating the cost of that trade based on the WM/Reuters "SW—Spot Week (One Week)" forward rates and a spot transaction.

In general, the Index is calculated and published by the Index Provider each Index Business Day, unless there is a "Market Disruption Event" or "Extraordinary Event" as described below. The Index value is disseminated each Index Business Day at approximately 6:00 a.m. Eastern time ("E.T.").

The Index methodology is transparent. Market makers will recalculate an approximate Index value using reliable intraday prices of gold and the relevant Index currencies to identify arbitrage opportunities that present themselves during the Exchange's Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., E.T.).

The Gold Delivery Agreement

The Fund has entered into a written contract with the Gold Delivery Provider. Subject to the terms of the Gold Delivery Agreement, on a daily basis, the Gold Delivery Provider will (i) calculate the Gold Delivery Amount and (ii) deliver Gold ounces equal to the U.S. dollar value of the Gold Delivery Amount into or out of the Fund. The Gold Delivery Amount is the amount of Gold ounces to be delivered into or out of the Fund on a daily basis to reflect price movements in the Reference Currencies comprising the FX Basket against the U.S. dollar from the prior Index Business Day (assuming no Market Disruption Event or Extraordinary Event has occurred or is continuing, as described in more detail below).

On each Index Business Day, the Gold Delivery Provider determines the notional exposure for each Reference Currency comprising the FX Basket based upon their respective Index weights. The total notional exposure for each Reference Currency on an Index Business Day takes into account the NAV of the Fund (which takes into account creation and redemption orders received on that day).

The Gold Delivery Provider then determines the "FX PnL" which captures the effect of changes in the daily value of the Reference Currencies comprising the FX Basket in their respective weights by calculating the change in the Spot Rate from the prior Index Business Day to the current Index Business Day and adjusting that change to reflect a notional spot-next trade because delivery of currencies is not being taken. The Gold Delivery Provider may use another rate if any Spot Rate is delayed or unavailable as set forth in the Gold Delivery Agreement. The Gold Delivery Provider generally will make this calculation outside of U.S. market hours (at approximately 4:00 a.m. E.T.) based on the prices of the Reference Currencies comprising the FX Basket published at the "WMR FX Fixing Time," which is generally at 9:00 a.m., London Time.

The FX PnL is divided by the Gold Price (*i.e.,* the LBMA Gold Price AM) to determine the Gold Delivery Amount. The fee that the Fund pays the Gold Delivery Provider for its services under the Gold Delivery Agreement is accrued daily and reflected in the calculation of the Gold Delivery Amount.

If the Gold Delivery Amount is a positive number (meaning that the Fund has experienced a currency gain on the notional short position in the FX Basket comprised of Reference Currencies), the Gold Delivery Provider will transfer to the Fund's custody account an amount of Gold (in ounces) equal to the Gold Delivery Amount. If the Gold Delivery Amount is a negative number (meaning that the Fund has experienced a currency loss on the notional short position in the FX Basket comprised of Reference Currencies), the Fund will transfer to the Gold Delivery Provider's custody account an amount of Gold (in ounces) equal to the Gold Delivery Amount.

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that market, where that data is available and reflects sufficient liquidity. The Thomson Reuters Market Data System is the primary infrastructure used to source spot foreign exchange rates used in the calculation of the rates. Other systems may be used where the appropriate rates are not available on the Thomson Reuters architecture. Over a five-minute fix period, actual trades executed and bid and offer order rates from the order matching systems are captured every second from 2 minutes 30 seconds before to 2 minutes 30 seconds after the time of the fix. From each data source, a single traded rate will be captured—this will be identified as a bid or offer depending on whether the trade is a buy or sell. A pre-defined spread set for each currency at each fix will be applied to the Trade Rate to calculate the opposite bid or offer. All captured trades will be subjected to validation checks. This may result in some captured data being excluded from the fix calculation. The WMR methodology guide is available at: *http://www.wmcompany.com/pdfs/WMReutersMethodology.pdf.*

Market Disruption and Extraordinary Events

From time to time, unexpected events may cause the calculation of the Index and/or the operation of the Fund to be disrupted. These events are expected to be relatively rare, but there can be no guarantee that these events will not occur. These events are referred to as either "Market Disruption Events" or "Extraordinary Events" depending largely on their significance and potential impact to the Index and Fund. Market Disruption Events generally include disruptions in the trading of Gold or the Reference Currencies comprising the FX Basket, delays or disruptions in the publication of the LBMA Gold Price or the Reference Currency prices, and unusual market or other events that are tied to either the trading of gold or the Reference Currencies comprising the FX Basket or otherwise have a significant impact on the trading of gold or the Reference Currencies comprising the FX Basket. For example, market conditions or other events which result in a material limitation in, or a suspension of, the trading of physical Gold generally would be considered Market Disruption Events, as would material disruptions or delays in the determination or publication of the LBMA Gold Price AM. Similarly, market conditions which prevent, restrict or delay the Gold Delivery Provider's ability to convert a Reference Currency to U.S. dollars or deliver a Reference Currency through customary channels generally would be considered a Market Disruption Event, as would material disruptions or delays in the determination or publication of WMR spot prices for any Reference Currency comprising the FX Basket. The complete definition of a Market Disruption Event is set forth below.

A "Market Disruption Event" occurs if either an "FX Basket Disruption Event" or a "Gold Disruption Event" occurs.

An "FX Basket Disruption Event" occurs if any of the following exist on any "Index Business Day"[31] with respect to the Reference Currencies comprising the FX Basket:

(i) An event, circumstance or cause (including, without limitation, the adoption of or any change in any applicable law or regulation) that has had or would reasonably be expected to have a materially adverse effect on the availability of a market for converting such Reference Currency to US Dollars (or vice versa), whether due to market illiquidity, illegality, the adoption of or change in any law or other regulatory instrument, inconvertibility, establishment of dual exchange rates or foreign exchange controls or the occurrence or existence of any other circumstance or event, as determined by the Index Sponsor; or

(ii) the failure of Reuters to announce or publish the relevant spot exchange rates for any Reference Currency in the FX Basket; or

(iii) any event or any condition that (I) results in a lack of liquidity in the market for trading any Reference Currency that makes it impossible or illegal for market participants (a) to convert from one currency to another through customary commercial channels, (b) to effect currency transactions in, or to obtain market values of, such, currency, (c) to obtain a firm quote for the related exchange rate, or (d) to obtain the relevant exchange rate by reference to the applicable price source; or (II) leads to any governmental entity imposing rules that effectively set the prices of any of the currencies; or

(iv) the declaration of (a) a banking moratorium or the suspension of payments by banks, in either case, in the country of any currency used to determine any Reference Currency exchange rate, or (b) capital and/or currency controls (including, without limitation, any restriction placed on assets in or transactions through any account through which a non-resident of the country of any currency used to determine the currency exchange rate may hold assets or transfer monies outside the country of that currency, and any restriction on the transfer of funds, securities or other assets of market participants from, within or outside of the country of any currency used to determine the applicable exchange rate.

A "Gold Disruption Event" occurs if any of the following exist on any Index Business Day with respect to gold:

(i) (a) The failure of the LBMA to announce or publish the LBMA Gold Price (or the information necessary for determining the price of gold) on that Index Business Day, (b) the temporary or permanent discontinuance or unavailability of the LBMA or the LBMA Gold Price; or

(ii) the material suspension of, or material limitation imposed on, trading in Gold by the LBMA; or

(iii) an event that causes market participants to be unable to deliver gold bullion loco London under rules of the LBMA by credit to an unallocated account at a member of the LBMA; or

(iv) the permanent discontinuation of trading of gold on the LBMA or any successor body thereto, the disappearance of, or of trading in, gold; or

(v) a material change in the formula for or the method of calculating the price of gold, or a material change in the content, composition or constitution of gold. The occurrence of a Market Disruption Event for five Index Business Days generally would be considered an Extraordinary Event for the Index and Fund.

Consequences of a Market Disruption or Extraordinary Event

On any Index Business Day in which a Market Disruption Event or Extraordinary Event has occurred or is continuing, the Index Provider generally will calculate the Index based on the following fallback procedures: (i) Where the Market Disruption Event is based on the Gold Price, the Index will be kept at the same level as the previous Index Business Day and updated when the Gold Price is no longer disrupted; (ii) where the Gold Price is not disrupted but one of the Reference Currency prices is disrupted, the Index will be calculated in the ordinary course except that the disrupted Reference Currency will be kept at its value from the previous Index Business Day and updated when it is no longer disrupted; and (iii) if both the Gold Price and a Reference Currency price are disrupted, the Index will be kept at the same level as the previous Index Business Day and updated when such prices are no longer disrupted. If a Market Disruption Event has occurred and is continuing for five (5) or more consecutive Index Business Days, the Index Provider will calculate a substitute price for each index component that is disrupted. If an Extraordinary Event has occurred and is continuing, the Index Provider shall be responsible for making any decisions regarding the future composition of the Index and implement any necessary adjustments that might be required. If necessary, the Fund may use alternate pricing sources to calculate NAV during the occurrence of any Market Disruption or Extraordinary event.[32] If the LBMA Gold Price AM is unavailable during the occurrence of a Market Disruption Event or Extraordinary Event, the Fund will calculate NAV using the last published LBMA Gold Price AM.

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[31] An "Index Business Day" is (i) any day that is a business day in New York and London, (ii) any day (other than a Saturday or Sunday) on which the LBMA is scheduled to publish the LBMA Gold Price AM, and (iii) any day (other than a Saturday or Sunday) on which WM Company is scheduled to publish prices for each of the Reference Currency pairs comprising the FX Basket.

[32] The Exchange may suspend trading in the Shares in the event the Sponsor suspends the right of redemptions.

The London Gold Bullion Market

Although the market for physical gold is global, most over-the-counter, or "OTC", trades are cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the "London Good Delivery Lists," which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

The term "loco London" refers to gold bars physically held in London that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of a LBMA acceptable refiner) and appearance set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA. Gold bars meeting these requirements are known as "London Good Delivery Bars." All of the gold held by the Fund will be London Good Delivery Bars meeting the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA.

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as 400-ounce bars, a London Good Delivery Bar must contain between 350 and 430 fine troy ounces of gold, with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar.

The LBMA Gold Price

IBA hosts a physically settled, electronic and tradeable auction process that provides a market-based platform for buyers and sellers to trade physical spot Gold. The final auction price is used and published to the market as the "LBMA Gold Price benchmark." The LBMA Gold Price is set twice daily at 10:30 a.m., London time and 3:00 p.m., London time in three currencies: U.S. dollars, euro and British pounds sterling. The LBMA Gold Price is a widely used benchmark for the physical spot price of Gold and is quoted by various financial information sources.

Participants in the IBA auction process submit anonymous bids and offers which are published on screen and in real-time. Throughout the auction process, aggregated Gold bids and offers are updated in real-time with the imbalance calculated and the price updated every 45 seconds until the buy and sell orders are matched. When the net volume of all participants falls within a pre-determined tolerance, the auction is deemed complete and the applicable LBMA Gold Price is published. Information about the auction process (such as aggregated bid and offer volumes) will be immediately available after the auction on the IBA's Web site.

The LBMA Gold Price replaced the widely used "London Gold Fix" as of March 20, 2015.

The Gold Futures Markets

Although the Fund will not invest in gold futures, information about the gold futures market is relevant as such markets contribute to, and provide evidence of, the liquidity of the overall market for Gold.

The most significant gold futures exchange is COMEX, part of the CME Group, Inc., which began to offer trading in gold futures contracts in 1974. TOCOM (Tokyo Commodity Exchange) is another significant futures exchange and has been trading gold since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. Both COMEX and TOCOM operate through a central clearance system and in each case, the clearing organization acts as a counterparty for each member for clearing purposes. Gold futures contracts also are traded on the Shanghai Gold Exchange and the Shanghai Futures Exchange.

The global gold markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants.

Net Asset Value

The Administrator will determine the NAV of Shares of the Fund each Business Day. The NAV of Shares of the Fund will be the aggregate value of the Fund's assets (which include gold payable, but not yet delivered, to the Fund) less its liabilities (which include accrued but unpaid fees and expenses). The NAV of the Fund will be calculated based on the price of Gold per ounce applied against the number of ounces of Gold owned by the Fund. For purposes of calculating NAV, the number of ounces of Gold owned by the Fund is adjusted up or down on a daily basis to reflect the Gold Delivery Amount. The number of ounces of Gold held by the Fund also reflects the amount of Gold delivered into (or out of) the Fund on a daily basis by Authorized Participants (as described below) creating and redeeming Shares. The number of ounces of Gold held by the Fund is adjusted downward by the Sponsor's fee and the expenses of the Gold Delivery Agreement.

In determining the Fund's NAV, the Administrator generally will value the Gold held by the Fund based on the LBMA Gold Price AM for an ounce of Gold. If no LBMA Gold Price AM is made on a particular Business Day (including a Business Day that is not an Index Business Day), the next most recent LBMA Gold Price AM determined prior to that Business Day generally will be used in the determination of the NAV of the Fund, unless the Sponsor determines that such price is inappropriate to use as the basis for such determination.[33] If the Sponsor determines that such price is inappropriate to use, it shall identify an alternate basis for evaluation of the Gold held by the Fund. In such case, the Sponsor would, for example, look to the current trading price of gold from other reported sources, such as dealer quotes, broker quotes or electronic trading data, to value the Fund's Shares. Although the Fund will not hold the Reference Currencies, the Gold Delivery Provider generally will value the Reference

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[33] The Exchange notes that such valuation procedure is substantially similar to that utilized by other issues of commodity-based exchange-traded products approved by the Commission for exchange listing. *See, e.g.*, Securities Exchange Act Release No. 59895 at p.17 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (approving listing on NYSE Arca of the ETFS Gold Trust); Securities Exchange Act Release No. 53521 at n.32 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust); and Securities Exchange Act Release No. 51058 at p.13 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

Currencies based on the rates in effect as of the WMR FX Fixing Time, which is generally at 9:00 a.m., London Time (though other prices may be used if the 9:00 a.m. rate is delayed or unavailable). The Administrator will also determine the NAV per Share, which equals the NAV of the Fund, divided by the number of outstanding Shares. Unless there is a Market Disruption Event or Extraordinary Event with respect to the price of gold, NAV generally will be calculated and disseminated by 12:00 p.m. E.T.

Creation and Redemption of Shares

The Fund expects to create and redeem Shares but only in Creation Units (a Creation Unit equals a block of 10,000 Shares or more). The creation and redemption of Creation Units requires the delivery to the Fund (or the distribution by the Fund in the case of redemptions) of the amount of Gold and any cash, if any, represented by the Creation Units being created or redeemed. The total amount of Gold and cash, if any, required for the creation of Creation Units will be based on the combined NAV of the number of Creation Units being created or redeemed. The initial amount of Gold required for deposit with the Fund to create Shares is 1,000 ounces per Creation Unit. The number of ounces of Gold required to create a Creation Unit or to be delivered upon redemption of a Creation Unit will change over time depending on Index performance net of the fees charged by the Fund and the Gold Delivery Provider. Creation Units may be created or redeemed only by "Authorized Participants" (as described below), who may be required to pay a transaction fee for each order to create or redeem Creation Units as will be set forth in the Registration Statement. Authorized Participants may sell to other investors all or part of the Shares included in the Creation Units they purchase from the Fund.

Creation Procedures—Authorized Participants

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. To become an Authorized Participant, a person must enter into a Participant Agreement. All Gold bullion must be delivered to the Fund and distributed by the Fund in unallocated form through credits and debits between an Authorized Participant's unallocated account ("Authorized Participant Unallocated Account") and the Fund's unallocated account ("Fund Unallocated Account") (except for Gold delivered to or from the Gold Delivery Provider pursuant to the Gold Delivery Agreement). All Gold bullion must be of at least a minimum fineness (or purity) of 995 parts per 1,000 (99.5%) and otherwise conform to the rules, regulations practices and customs of the LBMA, including the specifications for a London Good Delivery Bar.

On any Business Day, an Authorized Participant may place an order with the Fund to create one or more Creation Units. Purchase orders must be placed by 5:30 p.m., E.T. The day on which the Fund receives a valid purchase order is the purchase order date. By placing a purchase order, an Authorized Participant agrees to deposit Gold with the Fund, or a combination of Gold and cash, if any, as described below.[34] Prior to the delivery of Creation Units for a purchase order, the Authorized Participant must also have wired to the Fund the non-refundable transaction fee due for the purchase order.

The total deposit of Gold (and cash, if any) required to create each Creation Unit is referred to as the "Creation Unit Gold Delivery Amount." The Creation Unit Gold Delivery Amount is the number of ounces of Gold required to be delivered to the Fund by an Authorized Participant in connection with a creation order for a single Creation Unit.[35] The Creation Unit Gold Delivery Amount will be determined on the Business Day following the date such creation order is accepted. It is calculated by multiplying the number of Shares in a Creation Unit by the number of ounces of Gold associated with Fund Shares on the Business Day after the day the creation order is accepted. In addition, because the Gold Delivery Amount for the Fund does not reflect creation order transactions (see the section herein entitled "The Gold Delivery Agreement"), the Creation Unit Gold Delivery Amount is required to reflect the Gold Delivery Amount associated with such creation order. This amount is determined on the Business Day following the date such creation order is accepted.

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required Gold deposit amount by the end of the third Business Day in London following the purchase order date. Upon receipt of the Gold deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Fund, will transfer on the third Business Day following the purchase order date the Gold deposit amount from the Authorized Participant Unallocated Account to the Fund Unallocated Account and the Administrator will direct the Depository Trust Company ("DTC") to credit the number of Creation Units ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Gold until such Gold has been received by the Fund will be borne solely by the Authorized Participant. If Gold is to be delivered other than as described above, the Sponsor is authorized to establish such procedures and to appoint such custodians and establish such custody accounts as the Sponsor determines to be desirable.

Acting on standing instructions given by the Fund, the Custodian will transfer the Gold deposit amount from the Fund Unallocated Account to the Fund's allocated account by allocating to the allocated account specific bars of Gold which the Custodian holds or instructing a subcustodian to allocate specific bars of Gold held by or for the subcustodian. The Gold bars in an allocated Gold account are specific to that account and are identified by a list which shows, for each Gold bar, the refiner, assay or fineness, serial number and gross and fine weight. Gold held in the Fund's allocated account is the property of the Fund and is not traded, leased or loaned under any circumstances.

The Custodian will use commercially reasonable efforts to complete the transfer of Gold to the Fund's allocated account prior to the time by which the Administrator is to credit the Creation Unit to the Authorized Participant's DTC account; if, however, such transfers have not been completed by such time, the number of Creation Units ordered will be delivered against receipt of the Gold deposit amount in the Fund's unallocated account, and all Shareholders will be exposed to the risks of unallocated Gold to the extent of that Gold deposit amount until the Custodian completes the allocation process.

The Fund has the right, but not the obligation, to reject a purchase order if (i) the order is not in proper form as described in the Participant Agreement, (ii) the fulfillment of the order, in the opinion of its counsel, might be unlawful, (iii) if the Fund determines that acceptance of the order from an Authorized Participant would expose the Fund to credit risk; or (iv) circumstances outside the control of the Administrator, the Sponsor or the Custodian make the purchase, for all practical purposes, not feasible to process.

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[34] The Sponsor anticipates that in the ordinary course of the Fund's operations cash generally will not be part of any Creation Unit.

[35] The "Creation Unit Gold Delivery Amount" is also used to refer to the number of ounces of Gold to be paid by the Fund to an Authorized Participant in connection with the redemption of a Creation Unit. See "Redemption Procedures—Authorized Participants" herein.

Redemption Procedures—Authorized Participants

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any Business Day, an Authorized Participant may place an order with the Fund to redeem one or more Creation Units. Redemption orders must be placed by 5:30 p.m. E.T. A redemption order so received is effective on the date it is received in satisfactory form by the Fund. An Authorized Participant may be required to pay a transaction fee per order to create or redeem Creation Units as will be set forth in the Registration Statement.

The redemption distribution from the Fund consists of a credit in the amount of the Creation Unit Gold Delivery Amount to the Authorized Participant Unallocated Account of the redeeming Authorized Participant. The Creation Unit Delivery Amount for redemptions is the number of ounces of Gold held by the Fund associated with the Shares being redeemed plus, or minus, the cash redemption amount (if any). The Sponsor anticipates that in the ordinary course of the Fund's operations there will be no cash distributions made to Authorized Participants upon redemptions. In addition, because the Gold to be paid out in connection with the redemption order will decrease the amount of Gold subject to the Gold Delivery Agreement, the Creation Unit Gold Delivery Amount reflects the cost to the Gold Delivery Provider of resizing (*i.e.,* decreasing) its positions so that it can fulfill its obligations under the Gold Delivery Agreement.

The redemption distribution due from the Fund is delivered to the Authorized Participant on the third Business Day following the redemption order date if, by 10:00 a.m. E.T. on such third Business Day, the Fund's DTC account has been credited with the Creation Units to be redeemed. If the Administrator's DTC account has not been credited with all of the Creation Units to be redeemed by such time, the redemption distribution is delivered to the extent of whole Creation Units received. Any remainder of the redemption distribution is delivered on the next Business Day to the extent of remaining whole Creation Units received if the Administrator receives the fee applicable to the extension of the redemption distribution date which the Administrator may, from time to time, determine and the remaining Creation Units to be redeemed are credited to the Administrator's DTC account by 10:00 a.m. E.T. on such next Business Day. Any further outstanding amount of the redemption order will be cancelled. The Administrator is also authorized to deliver the redemption distribution notwithstanding that the Creation Units to be redeemed are not credited to the Administrator's DTC account by 10:00 a.m. E.T. on the third Business Day following the redemption order date if the Authorized Participant has collateralized its obligation to deliver the Creation Units through DTC's book entry system on such terms as the Sponsor and the Administrator may from time to time agree upon.

The Custodian transfers the redemption Gold amount from the Fund's allocated account to the Fund's unallocated account and, thereafter, to the redeeming Authorized Participant's Authorized Participant Unallocated Account.

The Fund may, in its discretion, suspend the right of redemption, or postpone the redemption settlement date: (1) For any period during which NYSE Arca is closed other than customary weekend or holiday closings, or trading on NYSE Arca is suspended or restricted, (2) for any period during which an emergency exists as a result of which delivery, disposal or evaluation of Gold is not reasonably practicable, or (3) such other period as the Sponsor determines to be necessary for the protection of the Shareholders, such as during the occurrence of a Market Disruption Event or Extraordinary Event based on the Gold Price.

The Fund has the right, but not the obligation, to reject a redemption order if (i) the order is not in proper form as described in the Participant Agreement, (ii) the fulfillment of the order, in the opinion of its counsel, might be unlawful, (iii) if the Fund determines that acceptance of the order from an Authorized Participant would expose the Fund to credit risk; or (iv) circumstances outside the control of the Administrator, the Sponsor or the Custodian make the redemption, for all practical purposes, not feasible to process.

Secondary Market Trading

While the Fund's investment objective is for the Shares to reflect the performance of Gold bullion in terms of the Reference Currencies reflected in the Index, less the expenses of the Fund, the Shares may trade in the secondary market at prices that are lower or higher relative to their NAV per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX, London, Zurich and Singapore. While the Shares will trade on NYSE Arca until 8:00 p.m. E.T., liquidity in the global gold market will be reduced after the close of the COMEX at 1:30 p.m. E.T. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

The Adviser represents that market makers in the Shares will be able to efficiently hedge their positions through use of spot gold transactions and spot currency transactions in Reference Currencies comprising the FX Basket. Transactions in spot gold and spot currencies during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m. E.T.) take place in a highly liquid market; such transactions that hedge the market makers' positions in Shares are expected to facilitate the market maker's ability to trade Shares at a price that is not at a material discount or premium to NAV.

Fund Expenses

The Sponsor will receive an annual fee equal to 0.33% of the daily NAV of the Fund. In return the Sponsor will be responsible for the payment of the ordinary fees and expenses of the Fund, including the Administrator's fee, the Custodian's fee, and the Index Provider's fee. This will be the case regardless of whether the ordinary expenses of the Fund exceed 0.33% of the daily NAV of the Fund. In addition, the Fund will pay the Gold Delivery Provider an annual fee of 0.17% of the daily NAV, so that the Fund's total annual expense ratio will be equal to 0.50%. The Sponsor's fee and payment to the Gold Delivery Provider are expected to be the only ordinary recurring expenses of the Fund.

Availability of Information Regarding Gold and Reference Currency Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, or the spot price of the Reference Currencies, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of information about gold and currency prices and gold and currency markets available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of Gold and pricing information for the Reference Currencies from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg, for example, provide at no charge on their Web sites delayed information regarding the spot price of Gold and last sale prices of Gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on Gold prices directly from market participants. Complete real-time data for Gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk.*

In addition, Reuters and Bloomberg, for example, provide at no charge on their Web sites delayed information regarding the spot price of each Reference Currency, as well as information about news and developments in the currency markets. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on currency transactions directly from market participants. Complete real-time data for currency transactions are available by subscription from Reuters and Bloomberg. There are a variety of other public Web sites providing information about the Reference Currencies and currency transactions, ranging from those specializing in currency trading to sites maintained by major newspapers.

Availability of Information

The Fund's Web site (*www.spdrgoldshares.com*) will provide an intraday indicative value ("IIV") per Share for the Shares updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m. E.T.) The IIV will be calculated based on the amount of Gold held by the Fund and (i) a price of Gold derived from updated bids and offers indicative of the spot price of Gold, and (ii) intra-day exchange rates for each Reference Currency against the U.S. dollar.[36] The Fund's Web site will also provide the Creation Basket Deposit and the NAV of the Fund as calculated each Business Day by the Administrator.

In addition, the Web site for the Fund will contain the following information, on a per Share basis, for the Fund: (a) The mid-point of the bid-ask price[37] at the close of trading ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Fund will also provide the Fund's prospectus, as well as the two most recent reports to stockholders. Finally, the Fund Web site will provide the last sale price of the Shares as traded in the U.S. market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day. The Index value will be calculated daily using the daily LBMA Gold Price AM and the Spot Rate as of 9:00 a.m., London time. The Index value will be available from one or more major market data vendors and will be available during the Exchange's Core Trading Session.

Criteria for Initial and Continued Listing

The Fund will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the Sprott Physical Gold Trust, ETFS Trusts, streetTRACKS Gold Trust, the iShares COMEX Gold Trust, and the iShares Silver Trust. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange, upon request, with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Under NYSE Arca Equities Rule 10.2, in the course of an investigation by the Exchange, the Exchange may request from ETP Holders documentary materials and other information, including trading records, regarding trading in currencies and currency derivatives. In addition, Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.

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[36] The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[37] The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[38] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above, or the Index value. If the interruption to the dissemination of the IIV or the Index value persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[39] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[40]

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

B. The Exchange's Statement of the Statutory Basis for the Proposed Rule Change

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[41] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities

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[38] *See* NYSE Arca Equities Rule 7.12.

[39] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[40] For a list of the current members of ISG, *see www.isgportal.org.*

[41] 15 U.S.C. 78f(b)(5).

Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange, upon request, with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Under NYSE Arca Equities Rule 10.2, in the course of an investigation by the Exchange, the Exchange may request from ETP Holders documentary materials and other information, including trading records, regarding trading in currencies and currency derivatives. In addition, Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Fund's Web site will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV of the Fund will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Fund's Web site. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at *www.lbma.org.uk*. The Fund's Web site will also provide the Fund's prospectus, as well as the two most recent reports to stockholders. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

C. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold.

D. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–NYSEArca–2016–84 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[42] to determine whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[43] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for the submission of additional analysis regarding the proposed rule change's consistency with Section 6(b)(5) of the Act,[44] which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."

1. The Shares would overlie both currencies and gold, and would be the first index-based issue of Commodity-Based Trust Shares, as well as the first issue of Commodity-Based Trust Shares to overlie an asset other than one or more commodities. The Commission seeks general comment on whether this unique combination of assets underlying the Shares, the Index, or the terms of the Gold Delivery Agreement raise any investor protection concerns or present any risk to fair and orderly trading in the Shares, including any particular risk regarding susceptibility of the Shares to manipulation.

2. NYSE Arca represents that the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, are adequate to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. While NYSE Arca Equities Rule 8.201(g) requires that an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares disclose its and its employees' commodity and commodity-related accounts, currencies are outside of the scope of the rule. The Commission seeks comment on whether the Exchange also should obtain from such market makers in the Shares information relating to its and its

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[42] 15 U.S.C. 78s(b)(2)(B).

[43] *Id.*

[44] 15 U.S.C. 78f(b)(5).

employees' accounts in the underlying Reference Currencies and all derivatives overlying the Reference Currencies, in light of the Shares' exposure to those currencies.

3. The Reference Currency Index values, which impact the NAV of the Fund, generally would be calculated using the Spot Rate for each Reference Currency. According to the Exchange, each Spot Rate would be calculated using observable data from arms-length transactions "where that data is available and reflects sufficient liquidity." [45] The Commission seeks comment on whether, for this or other reasons, the Spot Rates are susceptible to manipulation.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[46]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 13, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 27, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 2, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2016–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–84 and should be submitted on or before October 13, 2016. Rebuttal comments should be submitted by October 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Robert W. Errett,

Deputy Secretary.

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[45] *Supra* note 30.

[46] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[47] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78860; File No. SR–CHX–2016–16]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt the CHX Liquidity Taking Access Delay

September 16, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 6, 2016, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange ("CHX Rules") to adopt the CHX Liquidity Taking Access Delay. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange proposes to adopt the CHX Liquidity Taking Access Delay ("LTAD"). LTAD is designed to neutralize microsecond speed advantages exploited by low-latency market participants engaged in latency arbitrage[3] strategies that diminish displayed liquidity and impair price discovery in national market system ("NMS") securities.[4] In sum, LTAD would require all new incoming orders[5] received during the Open Trading State[6] that could immediately execute against one or more resting orders on the CHX book, as well as certain related cancel messages, to be intentionally delayed for 350 microseconds before such delayed messages would be processed[7] by the Matching System.[8][9] All other messages, including liquidity providing orders (*i.e.*, orders that would not immediately execute against resting orders) and cancel messages for resting orders, would be immediately processed without delay. LTAD will not delay any outbound messages or market data.

LTAD is a direct response to recent declines in CHX volume and liquidity in the SPDR S&P 500 trust exchange-traded fund ("SPY"),[10] which the Exchange attributes to latency arbitrage activity in SPY first observed at CHX in January 2016 ("SPY latency arbitrage activity").[11] Specifically, based on its review of unusual messaging patterns in SPY during the relevant period, corroborating Participant feedback and analysis of market data,[12] the Exchange believes that SPY latency arbitrage has caused CHX liquidity providers to dramatically reduce displayed liquidity in SPY (and at times withdraw from the market altogether), which, given CHX's significant contribution to overall volume and liquidity in SPY prior to the declines,[13] materially decreased liquidity in SPY marketwide, as discussed below.[14]

The Exchange believes that the best way to minimize the effectiveness of latency arbitrage strategies on CHX with respect to resting *limit orders* is to implement an asymmetric delay, such as LTAD, to deemphasize speed as a key to trading success.[15] By delaying liquidity taking orders, and not delaying liquidity providing orders and related adjustment messages, LTAD would give liquidity providers a small amount of additional time, the same length as the Investors Exchange LLC ("IEX") POP/coil delay ("IEX Delay") recently approved by the Commission,[16] to cancel or adjust resting orders on the CHX book to comport to the most recent market data before latency arbitrageurs could take such orders at potentially "stale" prices.[17] As the Commission noted in the IEX Approval Order, a symmetric delay that delays all inbound messages, such as the IEX Delay, would be ineffective in protecting resting limit orders from latency arbitrage.[18] Thus, the Exchange believes that LTAD will enhance displayed liquidity and price discovery in NMS securities without adversely affecting the ability of virtually all market participants, other than latency arbitrageurs, to access liquidity at CHX.[19]

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[3] As used herein, "latency arbitrage" means the practice of exploiting disparities in the price of a security or related securities that are being traded in different markets by taking advantage of the time it takes to access and respond to market information. Given its emphasis on speed, latency arbitrage has resulted in a well-documented and escalating technology race among certain market participants seeking to obtain ever smaller speed advantages. *See* Eric Budish, Peter Cramton and John Shim, "The High-Frequency Trading Arms Race: Frequent Batch Auctions as a Market Design Response," *Quarterly Journal of Economics,* Vol. 130(4), November 2015 ("Budish Paper"); *see also e.g.,* Elaine Wah and Michael Wellman. 2013. "Latency Arbitrage, Market Fragmentation, and Efficiency: A Two-Market Model." *14th ACM Conference on Electronic Commerce,* June. In recent years, a significant amount of academic research has been done regarding the impact of latency arbitrage on the efficiency of securities markets. *See id.* Many of these studies have suggested that latency arbitrage exacts a "tax" on liquidity provision that dissuades liquidity providers from displaying large aggressively priced orders for fear of their stale orders being taken by latency arbitrageurs before the liquidity providers have had the chance to adjust such orders when reacting to the same market data. *See* Eric Budish, Comment letter regarding "Investors' Exchange LLC Form 1 Application (Release No. 34–75925; File No. 10–222)" dated February 5, 2016 ("Budish Letter").

[4] The Exchange notes that while LTAD is designed to neutralize microsecond speed advantages, liquidity providers would still be required to obtain speed capabilities fast enough to take advantage of the LTAD.

[5] "New incoming orders" are orders received by the Matching System for the first time. As discussed below, LTAD will not apply to other situations where existing orders or portions thereof are treated as incoming orders, such as (1) resting orders that are price slid into a new price point pursuant to the CHX Only Price Sliding or Limit Up-Limit Down Price Sliding Processes and (2) unexecuted remainders of routed orders released into the Matching System. *See* CHX Article 1, Rule 2(b)(1)(C); *see also* CHX Article 20, Rule 2A(b); *see also* CHX Article 20, Rule 8(b)(7). Incidentally, the Exchange is proposing to amend CHX Article 20, Rule 8(a)(7), which describes how unexecuted remainders of routed orders are handled by the Matching System, to delete the word "new" from the last sentence, so that the rule provides, in pertinent part, that if no balance exists at the time a part of an unexecuted remainder of a routed order is returned to the Matching System, it shall be treated an incoming order.

[6] *See* CHX Article 1, Rule 1(qq) defining "Open Trading State."

[7] For ease of reference, "processed" means executing instructions contained in a message, including, but not limited to, permitting an order to execute within the Matching System pursuant to the terms of the order or cancelling an existing order, whereas "evaluate" means the Matching System determining whether a message should be diverted into LTAD, as described below.

[8] The Matching System is an automated order execution system, which is a part of the Exchange's "Trading Facilities," as defined under CHX Article 1, Rule 1(z).

[9] As discussed below, the Exchange submits that LTAD is a *de minimis* intentional access delay in that it is so short as to not frustrate the purposes of Rule 611 of Regulation NMS by impairing fair and efficient access to an exchange's quotations. *See* Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016) ("Final Interpretation"). Thus, the Exchange's quotations would continue to be "immediately" accessible and protected pursuant to Rule 611. *See* 17 CFR 242.600(b)(3) defining "automated quotation"; *see also* 17 CFR 242.600(b)(58) defining "protected quotation"; *see also infra* Section 3(b).

[10] The Exchange believes that much of the CHX liquidity in SPY and other S&P 500-correlated securities is provided as part of an arbitrage strategy between CHX and the futures markets, whereby liquidity providers utilize, among other things, proprietary algorithms to price and size resting orders on CHX to track index market data from a derivatives market (*e.g.,* E-Mini S&P traded on the Chicago Mercantile Exchange's Globex trading platform). As such, an exchange could not make related adjustments to these special orders on behalf of liquidity providers pursuant to an order type, such as pegged orders benchmarked to the NBBO. *Compare infra* note 16.

[11] As discussed in detail under Appendix A below, prior to the beginning of the SPY latency arbitrage activity in January 2016, CHX volume and liquidity in SPY constituted a material portion of overall volume and liquidity in SPY marketwide. For example, the CHX Market Share in SPY as a percentage of Total Volume decreased from 5.73% in January 2016 to 0.57% in July 2016, while the Control Securities did not experience similar declines. *See infra* note 12; *see also infra* Appendix A; *see also infra* Appendix B Calculation Set 1a. Also, the Time-weighted Average CHX Size At The NBBO in SPY relative to the total NMS Size At The NBBO in SPY decreased from 44.36% in January 2016 to 3.39% of the total NMS Size At The NBBO in SPY in July 2016, while the Control Securities did not experience similar declines. *See infra* note 12; *see also infra* Appendix A; *see also infra* Appendix B Calculations Sets 3a and 4a.

[12] A detailed analysis ("CHX ETF Analysis") of the impact of latency arbitrage on displayed liquidity in SPY at CHX, for the period of August 2015 through July 2016 ("Analysis Period"), may be found under Appendix A. The market data utilized by the CHX ETF Analysis, as well as defined terms and notes, may be found under Appendix B.

[13] *See supra* note 11.

[14] *See infra* Appendix A.

[15] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at Sandler O'Neil & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

[16] *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) ("IEX Approval Order"). Unlike LTAD, the IEX Delay will delay all inbound order-related messages from IEX Users, outbound message confirmations to IEX Users, and outbound market data disseminated through IEX's proprietary data feed. *See* IEX Approval Order at 41154. By not delaying inbound market data, IEX would be able to reprice its resting pegged orders to track changes to the NBBO before latency arbitrageurs could execute against such pegged orders at potentially stale prices, which facilitates the ability of IEX to comply with its rules regarding the repricing of pegged orders. *See* IEX Approval Order at 41155.

[17] In discussing possible alternatives to a frequent batch auction model for trading securities, the Budish Paper provides that "the asymmetric delay eliminates sniping and stops the arms race." *See* Budish Paper at 1612.

Additionally, the Exchange notes that adopting a symmetric delay and order types that would permit the Exchange to reprice resting orders based on undelayed market data (*e.g.*, pegged orders), such as the IEX Delay, would not be practical in addressing latency arbitrage with respect to limit orders because the liquidity provision strategies utilized by CHX liquidity providers in SPY, which provide valuable liquidity to the market overall,[20] require cancellations or adjustments to resting limit orders pursuant to proprietary algorithms held by the CHX liquidity providers that could not be adequately replicated by CHX.[21]

In light of the above, the Exchange submits that the proposed rules for LTAD are designed to operate in a manner that is consistent with the Act in that they are designed to protect investors and the public interest, are not designed to permit unfair discrimination, and would not impose any unnecessary or inappropriate burden on competition.[22] The Exchange now proposes the following amendments to the CHX Rules to implement LTAD.

Amended Article 20, Rule 8 (Operation of the CHX Matching System)

Proposed Article 20, Rule 8(h) provides rules that comprehensively describe LTAD. Specifically, proposed paragraph (h) begins by stating that after initial receipt[23] of a new incoming message, the Matching System will evaluate[24] the message to determine whether it is a "delayable message," as defined under proposed paragraph (h)(1) below. For the purposes of such an evaluation only, the Matching System shall not consider Match Trade Prevention ("MTP"), as described under current Article 1, Rule 2(b)(3)(F).[25] If not delayable, the Matching System will immediately process the message without delay. Proposed paragraph (h)(1) defines "delayable message" and provides that delayable messages shall only include the following:

(A) New incoming orders received during the Open Trading State[26] that would take liquidity from the CHX book.

(B) Cancel and cancel/replace messages for delayed orders that have not yet been released from LTAD.[27]

(C) The replace portion of a cancel/replace message where the cancel portion cancels a resting order and the replace portion would take liquidity from the CHX book.

The Exchange notes that the purpose of delaying the aforementioned cancel and cancel/replace messages is to minimize gaming opportunities by requiring the delayed order to interact with the CHX book before it is eligible for cancellation.

Mechanically, upon initial receipt of a new incoming message, the Matching System would assign the message a unique sequence number, as it does currently, which, in addition to establishing processing and execution priority, will serve as the starting point for the Fixed LTAD Period, as described below. The Matching System would then initially evaluate the message to determine whether it is a delayable message.[28] For example, a new incoming limit order marked Post Only[29] that could not take liquidity from the CHX book would not be a delayable message because it could not immediately execute against one or more resting orders on the CHX book. In such a case, the undelayed Post Only order would be immediately cancelled by the Matching System if it would immediately match with a resting order. Similarly, a new incoming order marked CHX Only[30] that would trade-through a protected quotation of an external market would not be a delayable message as it would be price slid to a permissible price.[31] However, a new incoming order that could immediately execute against a resting order, but for the fact that MTP would be triggered and prevent a match, would be considered a delayable message, as MTP is ignored for the purposes of LTAD evaluation only.[32]

Proposed paragraph (h) continues by providing that if a message is delayable, the message will be diverted into the LTAD queue and will remain delayed until it is released for processing. A delayed message shall become releasable 350 microseconds after initial receipt by the Exchange ("Fixed LTAD Period"),[33] but shall only be processed after the Matching System has evaluated and processed, if applicable,[34] all messages in the security received by the Exchange during the Fixed LTAD Period for the delayed message. Thus, a message may be delayed for longer than the Fixed LTAD Period depending on the then-current messaging volume in the security.[35] The Matching System will utilize a new market snapshot to process a released order.[36] Also, a delayed message shall retain its original sequence number and may only be delayed once. In addition, LTAD shall apply to all delayable messages submitted by any Participant for a security traded on the Exchange that is subject to LTAD. The Exchange may activate or deactivate LTAD per security with notice to Participants.[37]

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[18] *See* IEX Approval Order, *supra note* 16, at 41157.

[19] Based on the Exchange's analysis of cancel activity in SPY at CHX for the period starting in May 2016 through July 2016, the Exchange believes that if LTAD had been implemented during that time period, out of a total of 18,316 partially-executed orders in SPY, 20 liquidity taking orders not attributed to latency arbitrage activity would have not been executed, a *de minimis* number in the light of the enhanced liquidity and price discovery afforded by LTAD. *See infra* Appendix C.

[20] *See supra* note 12; *see also infra* Appendices A and B.

[21] *See supra* note 10.

[22] *See infra* Section 3(b).

[23] As used herein, "initial receipt" means the time at which the Exchange receives a message and assigns the message a unique sequence number, which the Exchange utilizes to determine, among other things, message processing order and ranking on the CHX book. *See* CHX Article 20, Rule 8(b).

[24] *See supra* note 7.

[25] The purpose of ignoring MTP in LTAD evaluation is to provide a previously delayed order that would not have triggered MTP an opportunity to execute against the resting order before the newer incoming order would cancel the resting order after release from LTAD. The Exchange is proposing unrelated modifications to MTP to contemplate LTAD, as discussed below.

[26] The Exchange notes that LTAD would not apply during a SNAP Cycle, as described under CHX Article 18, Rule 1, as orders are not immediately executable at that time.

[27] As noted later under proposed paragraph (h), a delayed message may only be delayed once and, thus, the replace portion of a delayed cancel/replace message shall not be diverted into LTAD upon release in the event that it would take liquidity from the CHX book.

[28] The Exchange notes that the Matching System processes messages for a given security serially. Thus, the length of time it takes for a message to be evaluated and/or processed by the Matching System after initial receipt is herein called "variable message queuing delay," as the actual length of the delay depends on the number of precedent messages that have yet to be evaluated and/or processed by the Matching System and are residing in the "Inbound Queue." The length of time it takes for a message to be evaluated and/or processed by the Matching System is herein called "system-processing delay."

[29] *See* CHX Article 1, Rule 2(b)(1)(D) defining "Post Only."

[30] *See* CHX Article 1, Rule 2(b)(1)(C) defining "CHX Only."

[31] *See* CHX Article 20, Rule 5(a)(2).

[32] *See supra* note 25.

[33] In the event that then-current messaging volume results in a delayable message being evaluated after 350 microseconds from initial receipt, the delayable message shall be diverted into LTAD and be immediately releasable. This will ensure that messages received during the Fixed LTAD Period for a delayed message are evaluated and processed, if applicable, before the delayable message is released.

[34] For example, an order that could not take liquidity from the CHX book would not be delayed and would be immediately processed, whereas an order that could take liquidity from the CHX book would be delayed and would not be immediately processed.

[35] In the event a releasable message is awaiting other messages received during its Fixed LTAD Period to be evaluated and processed, if applicable, the releasable message would be subject to an additional unintentional variable delay that is a function of the then-current messaging volume in the security. *See supra* note 28; *see also supra* note 33; *see also infra* Examples 1–3.

The Exchange also proposes to make corresponding amendments to current Article 20, Rule 8(d) and (f) to contemplate LTAD. Specifically, the Exchange proposes to add the clause "subject to paragraph (h) below" at the end of current paragraph (d)(1) so that amended paragraph (d)(1) provides as follows:

> Except for certain orders which shall be executed as described in Rule 8(e), below, an incoming order shall be matched against one or more resting orders in the Matching System, in the order in which the resting orders are ranked on the CHX book, pursuant to Rule 8(b) above, at the Working Price of each resting order, as defined under Article 1, Rule 1(pp), for the full amount of shares available at that price, or for the size of the incoming order, if smaller; subject to paragraph (h) below.

The Exchange also proposes to adopt paragraph (f)(3) to provide that certain cancel messages for an order in LTAD shall be handled as described under proposed paragraph (h). Incidentally, the Exchange proposes to replace the semi-colon and the word "and" at the end of current paragraph (f)(1) with a period.

Moreover, proposed paragraph (h)(2) describes how LTAD would interact with the Exchange's current order routing protocol and provides that the portion of a Routable Order[38] that is to be routed away, pursuant to current Article 19, Rule 3(a), shall be immediately routed without delay; provided that the entire unrouted balance of the Routable Order will be diverted into LTAD upon reaching the price point at which the unrouted balance of the Routable Order would become a delayable message (*i.e.*, would take liquidity from the CHX book), pursuant to proposed paragraph (h)(1)(A).

Currently, the Exchange determines where and how to route an order on a price point-by-price point basis.[39] That is, the Exchange does not aggregate all protected quotations and resting liquidity through multiple price points in making a single order routing decision.[40] Thus, to the extent that an incoming order could take liquidity from the CHX book at a price worse than an away protected quotation (*e.g.*, incoming sell order at $10.00/share; CHX Best Bid at $10.00/share and NBB at $10.01/share), the Matching System would not consider the fact that the incoming order could take liquidity from the CHX book at the time the Matching System is evaluating the better priced protected quotation. As such, LTAD may result in a portion of a Routable Order being immediately routed away and the unrouted remainder being delayed.

Amended Routing Protocol

In light of the possible bifurcation of a Routable Order into an immediately routed portion and a delayed unrouted portion and the fact that the Exchange does not currently utilize any Router Feedback[41] to augment protected quotations,[42] LTAD could result in a single order being routed twice to satisfy the same protected quotation. In order to eliminate this inefficiency, the Exchange proposes to amend its current order routing protocol to adopt a single type of Router Feedback called Immediate Feedback to be applied on an order-by-order basis only.[43]

Specifically, Immediate Feedback would permit the Exchange's Routing System to decrease the number of shares available at an away market by an amount equal to the size of the immediately routed portion of the Routable Order, on an order-by-order basis, with such feedback expiring as soon as: (i) One second passes or (ii) the Exchange receives new quote information from the away market.[44] This would permit the Exchange to utilize Immediate Feedback to ignore the protected quotation to which the immediately routed portion was routed when the unrouted delayed portion is released from LTAD, thereby preventing double routing to satisfy the same protected quotation.[45]

Examples 1–3 illustrate the operation of LTAD. Examples 3 and 4 illustrate the operation of the proposed amended routing protocol.

Amended Article 1, Rule 2(b)(3)(F) (Match Trade Prevention)

Current Article 1, Rule 2(b)(3)(F) describes the MTP modifier, which prevents matches between orders that originate from the same MTP Trading Group or MTP sublevel thereunder.[46] Also, an order sender must designate one of the following MTP Actions for each order, with the MTP Action noted on the incoming order controlling the MTP interaction:

> *MTP Cancel Incoming ("N"):* An incoming limit or market order marked "N" will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. Only the incoming order will be cancelled pursuant to MTP.
>
> *MTP Cancel Resting ("O"):* An incoming limit or market order marked "O" will not execute against opposite side resting interest originating from the same MTP Trading

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[36] The purpose of a new market snapshot is to ensure that the released order is processed in a manner consistent with federal securities rules and regulations, such as Regulation NMS and Regulation SHO.

[37] As of the date of this filing, the Exchange anticipates applying LTAD to all securities traded on CHX. In the event the Exchange decides to activate or deactivate LTAD for certain securities, the Exchange will communicate the list of securities for which LTAD will be applied and/or the securities for which LTAD will not be applied, as well as the effective date(s) of such change(s), through a Customer Service Notification. Any change to the list of LTAD securities shall not be effective prior to the trading day following the date of the Customer Service Notification and shall only be effective as of the beginning of the relevant trading day.

[38] *See* CHX Article 1, Rule 1(oo).

[39] *See* Exchange Act Release No. 74487 (March 12, 2015), 80 FR 14193 (March 18, 2015) (SR–CHX–2015–02).

[40] *See id.*

[41] "Router Feedback" refers to the use of routed orders ("Feedback Orders") to augment protected quotations for the purposes of calculating the NBBO. *See* Securities Exchange Act Release No. 74075 (January 15, 2015), 80 FR 3693 (January 23, 2015) (SR–BYX–2015–03).

[42] The consolidated market data disseminated by the securities information processors ("SIPs") are the only market data feeds utilized by the Exchange for the handling, execution and routing of orders, as well as for the regulatory compliance processes related to those functions. *See* CHX Article 1, Rule 4. Also, the Exchange does not currently ignore or modify SIP quote data for away markets under any circumstances where the SIP data feed shows an uncrossed market. *See* Exchange Act Release No. 74357 (February 24, 2015), 80 FR 11252 (March 2, 2015) (SR–CHX–2015–01); *see also* Securities Exchange Act Release No. 72711 (July 29, 2014), 79 FR 45570 (August 5, 2014) (SR–CHX–2014–10).

[43] Bats BYX utilizes three different types of Router Feedback in its calculation of the NBBO, which includes Immediate Feedback, which is described as follows: "Where BATS Trading routes an order to a venue with a protected quotation using Smart Order Routing (a "Feedback Order"), the number of shares available at that the venue is immediately decreased by the number of shares routed to the venue at the applicable price level." *See* SR–BYX–2015–03, *supra* note 41, at 3695. Also, all Feedback expires as soon as: (i) One second passes; (ii) the exchange receives new quote information; or (iii) the exchange receives updated Feedback information. *See id.*

[44] Given the length of the Fixed LTAD Period, the Exchange notes that it is unlikely that Immediate Feedback would expire due to one second passing without new quote information.

[45] Given the length of the Fixed LTAD Period, it is unlikely that the Exchange would receive a confirmation from the away market prior to the unrouted delayed portion being released from LTAD.

[46] *See* Securities Exchange Act Release No. 71216 (December 31, 2013), 79 FR 883 (January 7, 2014) (SR–CHX–2013–23); *see also* Securities Exchange Act Release No. 70948 (November 26, 2013), 78 FR 72731 (December 3, 2013) (SR–CHX–2013–20).

Group or MTP sublevel, if applicable. Only the resting order will be cancelled pursuant to MTP.

MTP Cancel Both ("B"): An incoming limit or market order marked "B" will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. The entire size of both orders will be cancelled pursuant to MTP.

Given that LTAD may result in newer orders (*i.e.,* orders with lower sequence numbers) becoming resting orders prior to older orders being released from LTAD,[47] the Exchange proposes to amend current Article 1, Rule 2(b)(3)(F)(iii)(a) and (b), which describe MTP Actions "N" and "O" respectively, to provide that the newer of the contra-side orders, as opposed to the incoming order if it is the older order, would be cancelled if the incoming order is marked "N," and the older of the contra-side orders, as opposed to the resting order if it is the newer order, would be cancelled if the incoming order is marked "O." Moreover, given that a price slid order that triggers MTP is not always the newer order[48] and because the Exchange wishes to maintain the current handling of MTP when it is triggered by a price slid order, the Exchange proposes to add clauses to the end of current subparagraphs (a) and (b) that preserve that current handling. Thus, amended subparagraphs (a) and (b) provide as follows:

(a) *MTP Cancel New ("N"):* An incoming limit or market order marked "N" will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. Only the newer order will be cancelled pursuant to MTP; provided that the incoming order will be cancelled, even if it is not the newer order, in the event MTP is triggered by the incoming order being price slid pursuant to the CHX Only Price Sliding Processes.

(b) *MTP Cancel Old ("O"):* An incoming limit or market order marked "O" will not execute against opposite side resting interest originating from the same MTP Trading Group or MTP sublevel, if applicable. Only the older order will be cancelled pursuant to MTP; provided that the resting order will be cancelled, even if it is not the older order, in the event MTP is triggered by the incoming order being price slid pursuant to the CHX Only Price Sliding Processes.

Example 5 below illustrates how the amended MTP would operate in the context of LTAD.

Examples

The following Examples are illustrative of LTAD and related amendments to existing functionality, but do not exhaustively depict every possible scenario that may arise under LTAD. Moreover, the Examples do not necessarily depict the actual technical processes of prioritizing messages and executing orders.

Example 1: LTAD. Assume that LTAD is operational, all messages are for security XYZ and all orders are routable. Assume that the system-processing delay[49] is 50 microseconds.[50] Assume then at 9:59:59.999999, the NBBO is 10.00 × 10.01, the Inbound Queue and the LTAD queue are empty and the CHX book is as follows:

FIG 1a—CHX BOOK

Buy	Sell
Empty	*Order A:* 1000 @ 10.01.

Assume then that at 10:00:00.000000, the Exchange receives the following order:

FIG 1b—INBOUND QUEUE

Initial receipt	Message
10:00:00.0000000	*Order B:* Buy 1000 @ 10.01.

Under this Example 1, *Order B* would be immediately evaluated and diverted into LTAD because it is a delayable message as it could execute against *Order A.* Due to the system-processing delay, *Order B* would be diverted into LTAD at 10:00:00.000050 and releasable at 10:00:00.000350. The result is that the Inbound Queue would be empty and the LTAD queue would be as follows:

FIG 1c—LTAD QUEUE

Releasable time	Message
10:00:00.000350	*Order B:* Buy 1000 @ 10.01.

Example 2: Execution Priority. Assume the same as Example 1 and the NBBO is still 10.00 × 10.01 with CHX being the only market at the NBO. Assume then that the Matching System receives the following new messages in security XYZ:

FIG 2a—INBOUND QUEUE

Initial receipt	Message
10:00:00.000265	*Cancel Order A.*
10:00:00.000305	*Order C:* Sell 1000 @ 10.02.
10:00:00.000310.	*Order D:* Buy 1000 @ 10.01.
10:00:00.000325	*Cancel Order B.*
10:00:00.000355	*Order E:* Sell 1000 @ 10.01.

Under this Example 2:

- *Cancel Order A* would be evaluated and processed at 10:00:00.000265 without being diverted into LTAD as it would cancel a resting order and is not a delayable message. However, due to the system-processing delay, *Order A* would actually be cancelled at 10:00:00.000315 and the CHX book would become empty.
- *Order C* would then be evaluated at 10:00:00.000315, due to the variable message queuing delay,[51] and then immediately processed without being diverted into LTAD as it adds liquidity to the CHX book and it is not a delayable message. However, due to the system-processing delay, *Order C* would actually post to the CHX book at 10:00:00.000365 and the CHX book would be as follows:

FIG 2b—CHX BOOK

Buy	Sell
Empty	*Order C:* 1000 @ 10.02.

- While *Order C* was being evaluated and processed by the Matching System, *Order B* became releasable from the LTAD queue at 10:00:00.000350. However, given that the Matching System processes messages serially,[52] the Matching System would not consider releasing *Order B* until after *Order C* had been processed at 10:00:00.000365, at which point it would be handled as follows:
  - ○ At 10:00:00.000365, the Matching System would compare the releasable time of *Order B* to the initial receipt time of the message at the top of the Inbound Queue: *Order D.* Since *Order D* was received during the Fixed LTAD Period for *Order B, Order D* would be evaluated before releasing *Order B* and

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[47] Currently, a new incoming order that triggers MTP is always newer than the resting contra-side order. However, LTAD may result in the newer of the contra-side orders being the resting order and the older order being the incoming order. *See infra* Example 5.

[48] *See* Example 4 under SR–CHX–2013–20.

[49] *See supra* note 28.

[50] The Exchange does not represent that actual system-processing delay is at or near 50 microseconds or that unintentional delays do not exist elsewhere in the Matching System processes. The figure is being utilized for demonstrative purposes only.

[51] *See supra* note 28.

[52] *See id.*

immediately processed without being diverted into LTAD as it adds liquidity to the CHX book and is not a delayable message. However, due to the system-processing delay, *Order D* would actually post to the CHX book at 10:00:00.000415. The result is that the NBBO would become 10.01 × 10.02 and the CHX book would be as follows:

FIG 2c—CHX BOOK

Buy	Sell
Order D: 1000 @10.01.	*Order C:* 1000 @10.02.

  - At 10:00:00.000415, the Matching System would then compare the releasable time of *Order B* to the initial receipt time of the next message at the top of the Inbound Queue: *Cancel Order B.* Since *Cancel Order B* was received when *Order B* was in the LTAD queue, *Cancel Order B* would be diverted into LTAD as it is a cancel message for an order that has yet to be released from LTAD. However, due to the system-processing delay, *Cancel Order B* would be diverted into LTAD at 10:00:00.000465 and releasable at 10:00:00.000675. The result is that the LTAD queue would be as follows:

FIG 2d—LTAD QUEUE

Releaseable time	Message
10:00:00.000350	*Order B:* Buy 1000 @10.01.
10:00:00.000675	*Cancel Order B.*

  - At 10:00:00.000465, the Matching System would then compare the releasable time of *Order B* to the initial receipt time of the next message at the top of the Inbound Queue: *Order E.* However, given that *Order E* was received after the Fixed LTAD Period for *Order B* had expired, the Matching System would release *Order B* before evaluating *Order E.* Due to the system-processing delay, *Order B* would actually post to the CHX book at 10:00:00.000515. Also, given that *Order B* was initially received before *Order D, Order B* would receive execution priority over *Order D,* pursuant to Article 20, Rule 8(b)(1). The result is that the CHX book would be as follows:

FIG 2e—CHX BOOK

Buy	Sell
Order B: 1000 @10.01. *Order D:* 1000 @10.01.	*Order C:* 1000 @10.02.

- *Order E* would then be evaluated at 10:00:00.000515, due to the variable message queuing delay, and since it would execute against *Order B,* it would be diverted into LTAD at 10:00:00.000565, due to the system-processing delay, and releasable at 10:00:00.000705. The result is that the LTAD queue would be as follows:

FIG 2f—LTAD QUEUE

Releasable time	Message
10:00:00.000675	*Cancel Order B.*
10:00:00.000705	*Order E:* Sell 1000 @10.01.

- *Cancel Order B* would then be released from LTAD at 10:00:00.000675, as there are no messages received during its Fixed LTAD Period in the Inbound Queue. Thus, Cancel Order B would be processed and Order B would be cancelled at 10:00:00.000725, due to the system-processing delay. The result is that the CHX Book and the LTAD queue would be as follows:

FIG 2g—CHX BOOK

Buy	Sell
Order D: 1000 @10.01.	*Order C:* 1000 @10.02.

FIG 2h—LTAD QUEUE

Releasable time	Message
10:00:00.000705	*Order E:* Sell 1000 @10.01.

- *Order E* would then be released from LTAD at 10:00:00.000725, as the Matching System was processing *Cancel Order B* when *Order E* became releasable at 10:00:00.000705. *Order E* would then be processed and fully execute against *Order D* at $10.01/share at 10:00:00.000775, due to the system-processing delay. The result is that the Inbound Queue and the LTAD queue would be empty and the CHX Book would be as follows:

FIG 2h—CHX BOOK

Buy	Sell
Empty	*Order C:* 1000 @10.02.

Example 3: Post Only and Routing—Immediate Feedback. Assume the same as Example 2 and that the NBBO is 10.01 × 10.02 with only one market ("Away Market A_1") displaying 1,000 shares at the NBB ("Protected Bid A_1"). Assume also that there are no Protected Bids at $10.00. Assume then that the Matching System receives the following new messages in security XYZ:

FIG 3a—INBOUND QUEUE

Initial receipt	Message
10:00:00.000800	*Cancel Order C.*
10:00:00.001000	*Order F:* Buy 1000 @10.00.
10:00:00.001010	*Order G:* Sell 2000 @9.99.
10:00:00.001020	*Order H:* Sell 2000 @9.99.
10:00:00.001030	*Cancel Order F.*
10:00:00.001040	*Order I:* Post Only Buy 1000 @10.00.

Under this Example 3:

- *Cancel Order C* would be evaluated at 10:00:00.000800 and then immediately processed without being diverted into LTAD as it would cancel a resting order and is not a delayable message. However, due to the system-processing delay, *Order C* would actually be cancelled at 10:00:00.000850 resulting in the CHX Book becoming empty.
- *Order F* would then be evaluated and processed at 10:00:00.001000 without being diverted into LTAD as it would provide liquidity and is not a delayable message. However, due to the system-processing delay, *Order F* would actually post to the CHX book at 10:00:00.001050. The result is that the CHX Book would be as follows:

FIG 3b—CHX BOOK

Buy	Sell
Order F: 1000 @10.00.	Empty.

- *Order G* would then be evaluated at 10:00:00.001050, due to variable message queuing delay. Pursuant to the Exchange's routing protocol, the Exchange would immediately route 1,000 shares of *Order G* priced at 10.01/share to satisfy Protected Bid A_1.[53] Moreover, since the unrouted 1000 shares of *Order G* could execute against *Order F* at 10.00, the unrouted 1000 shares of *Order G* would be diverted into LTAD at 10:00:00.001100, due to system-processing delay, and releasable at 10:00:00.001360. The result is that the LTAD queue would be as follows:

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[53] The Exchange notes that the time it takes for the Exchange to receive confirmation from the away market for a routed order is much longer than the proposed 350 microsecond LTAD. Thus, it is highly unlikely that the Exchange would receive an execution report from the away market before a delayed unrouted portion is released from LTAD. *See supra* notes 44 and 45.

FIG 3c—LTAD QUEUE

Releasable time	Message
10:00:00.001360	*Order G:* Sell 1000 @9.99.

- *Order H* would then be evaluated at 10:00:00.001100, due to variable message queuing delay. Given that *Order H* is virtually identical to *Order G* and that the proposed Immediate Feedback is only applied on an order-by-order basis, *Order H* would be handled exactly as *Order G*. Specifically, the Exchange would immediately route 1000 shares of *Order H* priced at 10.01/share to satisfy Protected Bid A_1. Moreover, since the unrouted 1000 shares of *Order H* could execute against *Order F* at 10.00, the unrouted 1000 shares of *Order H* would be diverted into LTAD at 10:00:00.001150, due to system-processing delay, and releasable at 10:00:00.001370. The result is that the LTAD queue would be as follows:

FIG 3d—LTAD QUEUE

Releasable time	Message
10:00:00.001360	*Order G:* Sell 1000 @9.99.
10:00:00.001370	*Order H:* Sell 1000 @9.99.

- *Cancel Order F* would then be evaluated at 10:00:00.001150, due to variable message queuing delay, but would be immediately processed without being diverted into LTAD as it would cancel a resting order and is not a delayable message. However, due to the system-processing delay, *Order F* would actually be cancelled at 10:00:00.001200. The result is that the CHX book would become empty.
- *Order I* would then be evaluated at 10:00:00.001200, due to variable message queuing delay, but would be immediately processed without being diverted into LTAD as it would provide liquidity and is not a delayable message. However, due to the system-processing delay, *Order I* would actually post to the CHX book at 10:00:00.001250. The result is that the CHX book would be as follows:

FIG 3E—CHX BOOK

Buy	Sell
Order I: Post Only 1000 @10.00.	Empty.

- *Unrouted remainder of Order G* would be released from LTAD at 10:00:00.001360, as all messages received during the Fixed LTAD Period for *Order G* have already been processed.[54] Thus, *Order G* would be processed and given the Immediate Feedback received from the routed portion of *Order G* and the fact that the Immediate Feedback had not expired, the unrouted remainder of Order G would fully execute against *Order I* at 10.00/share[55] at 10:00:00.001410, due to system-processing delay.[56] The result is that the CHX book would become empty.
- *Unrouted remainder of Order H* would be released from LTAD at 10:00:00.001410 as the Matching System was processing the unrouted remainder of *Order G* when the unrouted remainder of *Order H* became releasable at 10:00:00.001370. Thus, *Order H* would be processed and given the Immediate Feedback received from the routed portion of *Order H* and the fact that the Immediate Feedback had not expired, the unrouted remainder of *Order H* would post to the CHX book at 10:00:00.001460, due to system-processing delay. The result is that the CHX book would be as follows:

FIG 3F—CHX BOOK

Buy	Sell
Empty	*Order H:* 1000 at 9.99.

Example 4: Routing—Expired Feedback. Assume the same as Example 3, except that immediately prior to the unrouted portion of Order G being released, the Exchange received an updated quote from Away Market A_1 displaying 1,000 shares at the $10.01.

Under this Example 4, the Immediate Feedback derived from the immediately routed portion of *Order G* would expire and, upon release of the unrouted delayed portion of *Order G,* the Matching System would route the entire unrouted portion to satisfy the updated Protected Bid displayed by Away Market A_1.

Similarly, the Immediate Feedback derived from the immediately routed portion of *Order H* would also expire and, upon release of the unrouted delayed portion of *Order H,* the Matching System would route the entire unrouted portion to satisfy the updated Protected Bid displayed by Away Market A_1.

Example 5: MTP. Assume the same as Example 3, except that *Order G* and *Order I* originated from the same MTP Trading Group and Order G has an MTP Action of "N."

Under this Example 5, pursuant to the current MTP rules, MTP would be triggered and the unrouted remainder of *Order G* would be cancelled, as the current "N" MTP Action requires the *incoming* order to be cancelled. However, pursuant to the proposed amended MTP rules, *Order I* would be cancelled, as the amended "N" MTP action requires the *newer* order to be cancelled, absent a price sliding event.

Operative Date

In the event the proposed rule change is approved by the SEC, the proposed rule change shall be operative pursuant to notice by the Exchange to its Participants. Prior to the operative date, the Exchange will ensure that policies and procedures are in place to allow Exchange operations personnel to effectively monitor the operation of LTAD.

Appendix A: CHX ETF Analysis

The purpose of the CHX ETF Analysis is to demonstrate that latency arbitrage activity[57] in SPY at CHX ("SPY latency arbitrage activity") has (1) reduced volume and displayed liquidity in SPY at CHX and (2) impaired liquidity provision in SPY marketwide. For the purpose of this CHX ETF Analysis, the following terms shall have the following meanings:[58]

- *After Period* refers to February 2016 through July 2016.
- *Analysis Period* refers to August 2015 through July 2016.
- *Before Period* refers to August 2015 through December 2015.
- *Control Average* refers to the arithmetic average of a given metric for Control Securities.
- *Control Securities* refers to DIA, IWM, and QQQ.[59]
- *Entry Event* refers to a trading day in January 2016 on which latency arbitrage activity in SPY at CHX was first observed.

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[54] *See id.*

[55] *See* CHX Article 20, Rule 8(d)(1).

[56] The Exchange notes that Order I would receive the liquidity provide credit and Order G would be charged the liquidity taking fee, pursuant to Section E.1 of the Fee Schedule of the Exchange, even though Order I was initially received after Order G.

[57] *See supra* note 3.

[58] Other capitalized terms utilized in the CHX ETF Analysis shall have the meanings set forth under Appendix B.

[59] Each of the Control Securities were selected for the following similarities to SPY in that each is: (1) Highly correlated in price movements with a well-known equity market index; (2) ETFs; (3) traded in CHX's Chicago data center; (4) actively traded in the NMS; and (5) Highly correlated with a futures contract traded electronically on the Globex trading platform.

- *Entry Month* refers to January 2016, the month in which latency arbitrage activity in SPY at CHX was first observed.
- *Subject Securities* refers to SPY and the Control Securities.

Entry of SPY Latency Arbitrage Activity

During the After Period, the Exchange observed unusual messaging patterns in SPY whereby executions of large inbound Immediate Or Cancel ("IOC") [60] orders against resting orders in SPY were frequently followed by the receipt of late cancel messages for the executed resting orders very soon after the execution. This observation was corroborated by feedback from liquidity providing Participants that indicated that, unlike prior to the Entry Event, they were no longer able to reliably cancel or cancel/adjust resting orders on the CHX book in SPY in response to market changes after the Entry Event. The Exchange believes that each instance of the unusual messaging pattern is the end result of a race triggered by an away market event (*e.g.,* change in market data from a futures market) where the liquidity taker is able to take a resting order at a stale price before the liquidity provider could adjust the resting order to accurately reflect the market.[61] As such, the SPY latency arbitrage activity has had the following impact on volume and liquidity in SPY at CHX and away exchanges:

Analysis 1: SPY Latency Arbitrage Activity Reduced CHX Market Share in SPY Relative to Total Volume in SPY and Disproportionately To Control Securities

As shown under *Figure 1,* CHX Market Share in SPY as a percentage of Total Volume dropped by 90.1% from 5.73% in the Entry Month to 0.57% in July 2016, while CHX Market Share in the Control Average dropped by 45.20% from 5.54% in the Entry Month to 3.03% in July 2016.[62] As shown under *Figure 2,* changes in the average Total Volume during the Analysis Period for the Subject Securities were highly correlated. Thus, *Figure 1* and *Figure 2* show that despite the high correlation between SPY and each of the Control Securities during the Analysis Period, the CHX Market Share in SPY decreased disproportionately to Total Volume, which the Exchange submits is attributed to the SPY latency arbitrage activity.

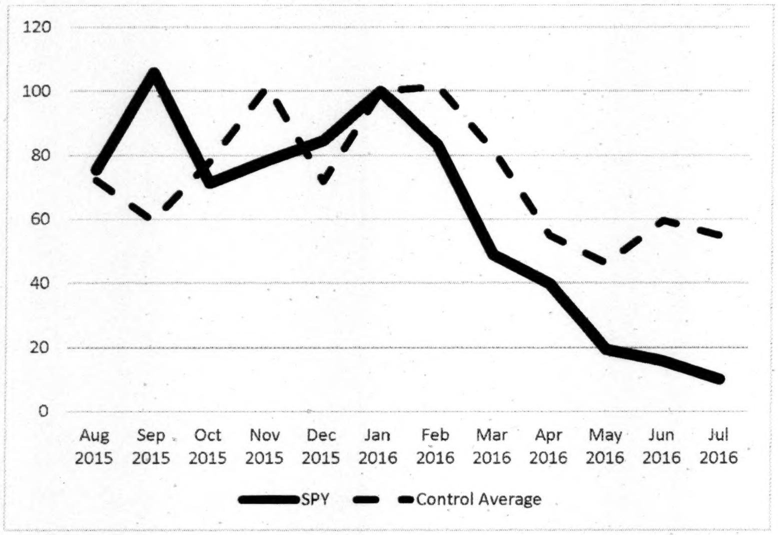

Figure 1. This figure illustrates the decrease in CHX Market Share as a percentage of Total Volume in the Subject Securities (Index: January 2016 = 100).[63]

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[60] *See* CHX Article 1, Rule 2(d)(4).

[61] *See supra* note 10.

[62] *See infra* Appendix B Calculation Set 1a.

[63] *See infra* Appendix B Calculation Sets 1a and 1b.

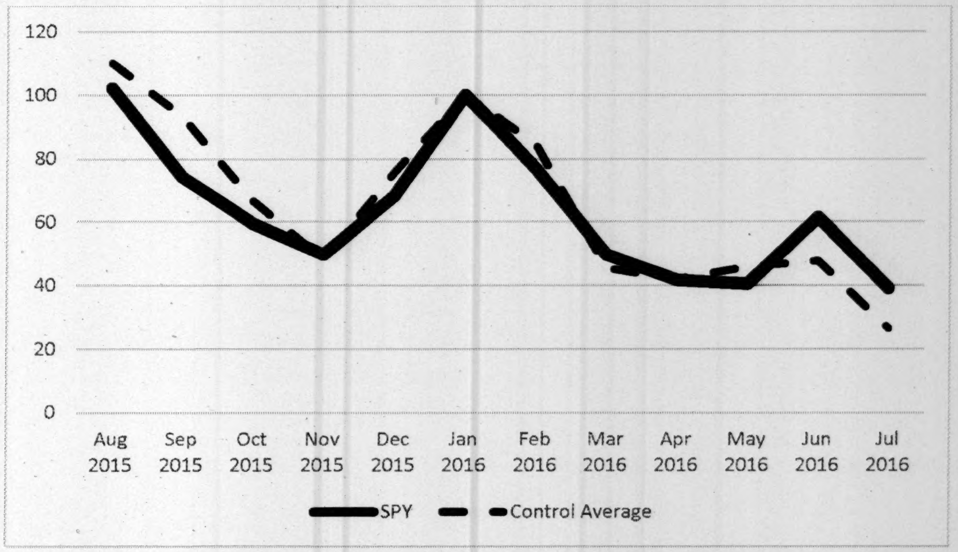

Figure 2. This figure illustrates the correlation in the Total Volume between SPY and the Control Average (Index: January 2016 = 100) during the Analysis Period.[64] [65]

Analysis 2: SPY Latency Arbitrage Activity Resulted in Less Aggressively Priced and Smaller Orders in SPY at CHX

While the Exchange did not observe any discernable change on the NBBO spread in SPY during the After Period, the Exchange did observe a negative impact on the frequency at which CHX was at the NBBO in SPY and the frequency at which CHX displayed the largest quote at the NBBO in SPY during the After Period, while Control Securities experienced either smaller declines or no declines at all.[66]

Specifically, the % of Time CHX Was At The NBB decreased from 23.8% in the Entry Month to 8.2% in July 2016; [67] the % of Time CHX Was At The NBO decreased from 23.3% in the Entry Month to 5.8% in July 2016; [68] and the % of Time CHX Was At The NBB and that CHX Was At The NBO decreased from 3.3% in the Entry Month to 0% in July 2016.[69]

Moreover, the % of Time CHX Was At The NBB And Was The Largest Bid At That Price decreased from 20% in the Entry Month to 2.3% in July 2016; [70] the % of Time CHX Was At The NBO And Was The Largest Offer At That Price decreased from 20.7% in the Entry Month to 1.1% in July 2016; [71] and the % of Time CHX Was At The NBB And Was The Largest Bid At That Price and that CHX Was At The NBO And Was The Largest Offer At That Price decreased from 1.9% to 0%.[72]

These calculation sets clearly show that SPY latency arbitrage activity resulted in less aggressively priced CHX displayed liquidity in SPY and smaller CHX displayed size at the NBBO, during the After Period. SPY latency arbitrage also negatively impacted the percentage of the time that CHX was at the NBBO and the percentage of the time CHX displayed the largest quote at the NBBO.

Analysis 3: Latency Arbitrage Activity at CHX Reduced CHX Size at The NBBO in SPY Relative to the Control Securities and NMS Size at The NBBO

As shown under *Figure 3,* during the Before Period, the Time-weighted Average CHX Size at The NBBO for SPY tended to follow changes to the Control Average, whereas from the Entry Month through July 2016, the Time-weighted Average CHX Size At The NBBO for SPY decreased by 82.16% and the Time-weighted Average CHX Size At The NBBO for the Control Average increased by 64.38%.[73] As shown under *Figure 4,* during the Before Period, the monthly changes in the Time-weighted Average CHX Size At The NBBO tended to follow similar changes to the Time-weighted Average NMS Size At The NBBO. However, during the After Period, the monthly changes in the Time-weighted Average CHX Size At The NBBO in SPY did not follow changes to the Time-weighted Average NMS Size At The NBBO in SPY. Moreover, during the After Period, CHX went from having a Two-Sided Market in SPY 100% of regular trading hours in the Entry Month to 74% of regular trading hours in July 2016.[74]

Thus, *Figure 3* and *Figure 4* show that SPY latency arbitrage negatively impacted liquidity in SPY marketwide. Moreover, the data shows that the change in the risk/reward of providing liquidity in SPY at CHX which resulted from the introduction of the SPY latency arbitrage activity resulted in a significant reduction of liquidity in SPY provided by CHX, even during a period when significant incremental liquidity was being added in the Control Securities.

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[64] The correlation coefficients (ρ) over the twelve-month period were: ρ(SPY, DIA) = 0.9118, ρ(SPY, IWM) = 0.8996, ρ(SPY, QQQ) = 0.9392, ρ(SPY, Average) = 0.9493.

[65] *See infra* Appendix B Calculation Sets 2a and 2b.

[66] *See infra* Appendix B Calculation Sets 6 and 7.

[67] *See infra* Appendix B Calculation Set 6a.

[68] *See infra* Appendix B Calculation Set 6b.

[69] *See infra* Appendix B Calculation Set 6c.

[70] *See infra* Appendix B Calculation Set 7a.

[71] *See infra* Appendix B Calculation Set 7b.

[72] *See infra* Appendix B Calculation Set 7c.

[73] *See infra* Appendix B Calculation Sets 3a and 3b.

[74] *See infra* Appendix B Calculation Set 5.

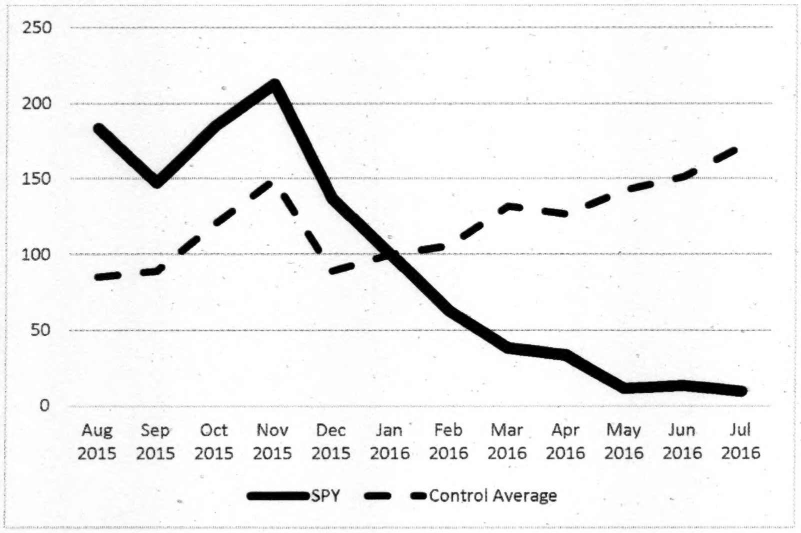

Figure 3. This figure illustrates the Time-weighted Average CHX Size At The NBBO in the Subject Securities (Indexed: January 2016 = 100) during the Analysis Period.[75]

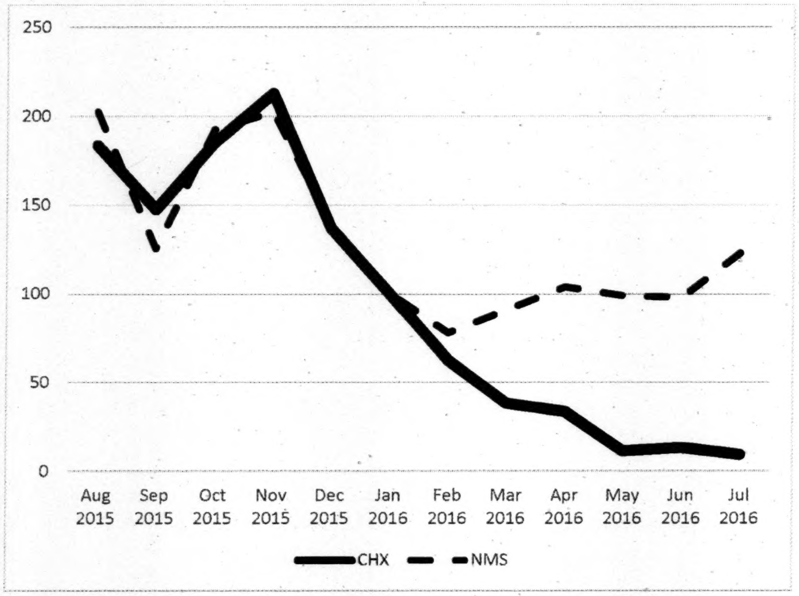

Figure 4. This figure illustrates the Time-weighted Average CHX Size At The NBBO in SPY versus Time-weighted Average NMS Size At The NBBO in SPY (Indexed: January 2016 = 100) during the Analysis Period.[76]

Analysis 4: SPY Latency Arbitrage Activity Reduced Displayed Liquidity in SPY Marketwide

Although the Time-weighted Average NMS Size At The NBBO in SPY increased by 22.83% during the After Period, the increase in SPY did not follow much greater increases in the Time-weighted Average NBBO Size in the Control Group, which increased by 128.82% during the After Period.[77] Moreover, during the After Period, the Time-weighted Average CHX Size At The NBBO for SPY decreased by 90.61%[78] and, as a % of total NMS Size At The NBBO in SPY, from 44.36% to

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[75] *See infra* Appendix B Calculation Sets 3a and 3b.

[76] *See infra* Appendix B Calculation Sets 3b and 4b.

[77] *See infra* Appendix B Calculation Set 4a.

[78] *See infra* Appendix B Calculation Set 3a.

3.39%.[79] These calculations suggest that the SPY latency arbitrage activity materially impacted displayed liquidity in SPY marketwide. The dramatic decrease in displayed liquidity in SPY at CHX during the After Period explains why the increase in Time-weighted Average NBBO Size in SPY lagged behind the increase in Time-weighted Average NBBO Size in the Control Securities. Had CHX Size At The NBBO remained at least constant during the After Period, NBBO Size in SPY would have been at least 32.7% higher in July 2016, as shown below: [80]

	NMS size at NBBO			Change attribution	
	Jan–16	Jul–16	Change	CHX	Others
SPY	9,513	11,686	2,172	−3,824	5,996
DIA	2,569	4,711	2,142	1,227	915
IWM	5,222	10,026	4,804	536	4,268
QQQ	14,100	35,354	21,253	3,900	17,353
Control Average	7,297	16,697	9,400	1,888	7,512

Conclusion

Based on its observations of unusual messaging patterns in SPY, feedback from Participants and the analysis summarized above, the Exchange believes that the unusual messaging activity in SPY that was first observed in the Entry Month is attributed to SPY latency arbitrage activity. The market data shows that in response to the SPY latency arbitrage activity, CHX liquidity providers displayed smaller orders in SPY at less aggressive prices during the After Period relative to the Before Period and Entry Month. Moreover, in light of CHX's significant contribution to overall volume and liquidity in SPY during the Before Period and the Entry Month, diminished displayed liquidity at CHX has materially impaired displayed liquidity in SPY marketwide.

Appendix B: Calculation Sets

The calculations sets below were prepared with microsecond-level trade and quote record. Trade records include the date, microsecond-level timestamp, exchange, security symbol, price, and quantity of all trades reported to the consolidated tape. Quote records include the date, microsecond-level timestamp, exchange, security symbol, bid price, bid quantity, ask price, and ask quantity of all quotes reported to the consolidated tape. Only protected quotations are reported to the consolidated tape.

The Analysis Period for the calculations begins on August 1, 2015 and ends on July 31, 2016. Symbols SPY and three other Control Securities (*i.e.*, DIA, IWM, and QQQ) were considered. Only trades and quotes that occurred on the national securities exchanges during the regular trading hours [81] were considered. Certain types of non-standard trades were excluded.[82] Quotes with negative prices or quantities were excluded. Unless otherwise indicated, lengths of time when the market was locked or crossed were not considered.

In the calculations below:

- *Total Volume* refers to the number of shares of the indicated symbol traded on the national securities exchanges on a given day, excluding certain types of non-standard trades. *CHX Volume* refers to the number of shares of the indicated symbol traded on CHX on a given day, excluding certain types of non-standard trades.
- *CHX Market Share* was calculated as CHX Volume divided by Total Volume on a given day, CHX Market Share = CHX Volume ÷ Total Volume.
- *CHX Had A Two-Sided Market* refers to an indicator variable defined as true at any microsecond when there was at least one bid and at least one offer among all outstanding orders on CHX, and false otherwise. *CHX Had A One-Sided Market* refers to an indicator variable defined as true at any microsecond when there was at least one bid but no offers among all outstanding orders on CHX or when there was at least one offer but no bids among all outstanding orders on CHX, and false otherwise. *CHX Had No Market* refers to an indicator variable defined as true at any microsecond when there were no outstanding orders on CHX, and false otherwise.
- A bid was *At The NBB* at any microsecond when its price was equal to the National Best Bid. An offer was *At The NBO* at any microsecond when its price was equal to the National Best Offer.
- At any microsecond, the *NMS Size At The National Best Bid* ("NMS Size At The NBB") refers to the quantity of shares in prevailing bids on the national securities exchanges priced at the National Best Bid and the *NMS Size At The National Best Offer* ("NMS Size At The NBO") refers to the quantity of shares in prevailing offers on the national securities exchanges priced at the National Best Offer. *NMS Size At The NBBO* was calculated as the average of the National Best Bid Size and the National Best Offer Size at each microsecond, NMS Size At The NBBO = (NMS Size At The NBB + NMS Size At The NBO) ÷ 2.
- *CHX Was At The NBB* refers to an indicator variable defined as true at any microsecond when the CHX Best Bid was at the National Best Bid, and false otherwise. *CHX Was At The NBO* refers to an indicator variable defined as true at any microsecond when the CHX Best Offer was at the National Best Offer, and false otherwise.
- At any microsecond, the *CHX Size At The NBB* ("CHX Size At The NBB") refers to the CHX Best Bid Size if CHX was at the NBB and zero if CHX was not at the NBB. At any microsecond, the *CHX Size At The NBO* ("CHX Size At The NBO") refers to the CHX Best Offer Size if CHX was at the NBO and zero if CHX was not at the NBO. *CHX Size At The NBBO* was calculated as the average of the CHX Size At The NBB and CHX Size At The NBO at each microsecond, CHX Size At The NBBO = (CHX Size At The NBB + CHX Size At The NBO) ÷ 2.
- *CHX Was At The NBB And Was The Largest Bid At That Price* refers to an indicator variable defined as true at any microsecond when CHX was at the National Best Bid and the CHX Best Bid Size was greater than or equal to the largest quantity of shares in prevailing bids on any one national securities exchange other than CHX, and false otherwise. *CHX Was At The NBO And Was The Largest Offer At That Price* refers to an indicator variable defined as true at any microsecond when CHX was at the National Best Offer and the CHX Best Offer Size was greater than or equal to the largest quantity of shares in prevailing offers on any one national securities exchange other than CHX, and false otherwise.

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[79] *See infra* Appendix B Calculations Sets 3a and 4a.

[80] *See infra* Appendix B Calculation Set 4a.

For the calculations in the table below:

- Monthly average values are shown. Monthly average values were calculated as the average of daily values for each day in a month. Daily values were calculated as time-weighted averages or as percentages of time in the trading day, as indicated in the table. *Time-weighted average* values were calculated as daily average of the specified quantity, market share, or spread value weighted by time (in microseconds). *% of time* values were calculated as the length of time (in microseconds) for which the specified indicator variable was true divided by the length of time in that trading day, excluding lengths of time during which the market was locked or crossed or otherwise could not be calculated (*e.g.,* at the start of the trading day).

No.	Calculation	Month	Symbol				
			SPY	DIA	IWM	QQQ	Control average
			[1]	[2]	[3]	[4]	([2]:[4])
[1a]	CHX Market Share (% of Total Volume)	Aug 2015	4.32%	3.07%	5.51%	3.40%	3.99%
		Sep 2015	6.07%	2.61%	3.82%	3.46%	3.30%
		Oct 2015	4.08%	5.95%	2.58%	4.42%	4.32%
		Nov 2015	4.49%	8.58%	3.14%	5.13%	5.62%
		Dec 2015	4.85%	4.89%	2.53%	4.49%	3.97%
		Jan 2016	5.73%	9.13%	3.14%	4.35%	5.54%
		Feb 2016	4.78%	9.13%	3.32%	4.41%	5.62%
		Mar 2016	2.80%	7.54%	2.38%	3.57%	4.50%
		Apr 2016	2.28%	4.41%	2.01%	2.69%	3.04%
		May 2016	1.10%	3.53%	2.21%	1.93%	2.55%
		Jun 2016	0.90%	5.17%	1.74%	3.00%	3.30%
		Jul 2016	0.57%	6.11%	1.22%	1.77%	3.03%
[1b]	CHX Market Share (% of Total Volume) Index: January 2016 = 100	Aug 2015	75	34	176	78	72
		Sep 2015	106	29	122	80	60
		Oct 2015	71	65	82	102	78
		Nov 2015	78	94	100	118	101
		Dec 2015	85	54	81	103	72
		Jan 2016	100	100	100	100	100
		Feb 2016	83	100	106	102	102
		Mar 2016	49	83	76	82	81
		Apr 2016	40	48	64	62	55
		May 2016	19	39	70	44	46
		Jun 2016	16	57	55	69	60
		Jul 2016	10	67	39	41	55
[2a]	Average Total Volume	Aug 2015	130,150,083	6,153,725	26,846,599	33,963,873	23,568,046
		Sep 2015	94,627,144	6,552,649	21,381,524	28,452,481	19,947,099
		Oct 2015	75,881,581	4,461,519	22,420,310	22,701,556	14,268,977
		Nov 2015	63,307,314	3,673,677	16,624,141	17,531,483	10,308,999
		Dec 2015	87,011,822	4,969,853	23,287,782	24,474,150	16,211,695
		Jan 2016	127,469,871	8,301,912	35,204,822	39,029,308	21,425,674
		Feb 2016	97,911,733	6,121,299	27,668,000	35,547,824	18,060,375
		Mar 2016	63,333,000	2,521,807	20,709,893	17,600,599	9,724,974
		Apr 2016	53,023,531	2,337,084	15,556,074	14,984,599	8,991,216
		May 2016	51,578,634	2,016,095	17,899,288	14,856,962	9,822,504
		Jun 2016	78,385,026	2,740,421	20,938,721	16,963,513	10,240,678
		Jul 2016	49,783,615	2,130,330	14,122,275	11,973,239	5,657,111
[2b]	Average Total Volume Index: Jan 2016 = 100	Aug 2015	102	74	76	87	110
		Sep 2015	74	79	61	73	93
		Oct 2015	60	54	64	58	67
		Nov 2015	50	44	47	45	48
		Dec 2015	68	60	66	63	76
		Jan 2016	100	100	100	100	100
		Feb 2016	77	74	79	91	84
		Mar 2016	50	30	59	45	45
		Apr 2016	42	28	44	38	42
		May 2016	40	24	51	38	46
		Jun 2016	61	33	59	43	48
		Jul 2016	39	26	40	31	26
[3a]	Time-weighted Average CHX Size At The NBBO.	Aug 2015	7,740.13	753.47	2,294.04	3,666.82	2,238.11
		Sep 2015	6,217.48	682.18	2,157.29	4,177.88	2,339.12
		Oct 2015	7,816.38	1,308.53	2,052.68	6,130.87	3,164.03
		Nov 2015	8,983.84	2,439.37	2,158.33	7,182.16	3,926.62
		Dec 2015	5,776.73	1,152.21	1,517.59	4,347.08	2,338.96
		Jan 2016	4,220.05	1,830.97	1,726.35	4,341.83	2,633.05
		Feb 2016	2,642.32	1,829.95	2,004.50	4,523.73	2,786.06
		Mar 2016	1,611.90	2,347.82	2,077.08	5,987.78	3,470.89
		Apr 2016	1,415.95	1,481.35	2,314.10	6,196.84	3,330.76
		May 2016	485.23	1,469.69	2,374.66	7,423.33	3,755.89
		Jun 2016	565.73	1,772.03	2,188.41	7,994.73	3,985.06
		Jul 2016	396.37	3,057.61	2,262.70	8,241.77	4,520.69

No.	Calculation	Month	Symbol				
			SPY	DIA	IWM	QQQ	Control average
			[1]	[2]	[3]	[4]	([2]:[4])
[3b]	Time-weighted Average CHX Size At The NBBO. Index: Jan 2016 = 100	Aug 2015	183	41	133	84	85
		Sep 2015	147	37	125	96	89
		Oct 2015	185	71	119	141	120
		Nov 2015	213	133	125	165	149
		Dec 2015	137	63	88	100	89
		Jan 2016	100	100	100	100	100
		Feb 2016	63	100	116	104	106
		Mar 2016	38	128	120	138	132
		Apr 2016	34	81	134	143	126
		May 2016	11	80	138	171	143
		Jun 2016	13	97	127	184	151
		Jul 2016	9	167	131	190	172
[4a]	Time-weighted Average NMS Size At The NBBO.	Aug 2015	19,257.66	2,609.35	6,511.42	18,471.79	9,197.52
		Sep 2015	11,919.38	1,679.93	6,540.46	14,223.92	7,481.44
		Oct 2015	18,309.27	2,468.56	6,972.46	19,848.75	9,763.26
		Nov 2015	19,257.58	3,930.75	6,963.92	23,442.48	11,445.72
		Dec 2015	13,230.66	2,204.20	5,812.28	17,106.74	8,374.40
		Jan 2016	9,513.33	2,569.26	5,221.94	14,100.46	7,297.22
		Feb 2016	7,417.60	2,489.46	6,340.40	13,869.32	7,566.40
		Mar 2016	8,638.39	3,703.26	8,521.28	20,316.43	10,846.99
		Apr 2016	9,876.59	3,070.53	9,422.71	23,246.57	11,913.27
		May 2016	9,398.26	3,144.93	10,295.88	28,354.88	13,931.90
		Jun 2016	9,313.10	3,107.54	9,597.43	28,288.57	13,664.51
		Jul 2016	11,685.53	4,711.37	10,026.35	35,353.64	16,697.12
[4b]	Time-weighted Average NMS Size At The NBBO. Index: Jan 2016 = 100	Aug 2015	202	102	125	131	126
		Sep 2015	125	65	125	101	103
		Oct 2015	192	96	134	141	134
		Nov 2015	202	153	133	166	157
		Dec 2015	139	86	111	121	115
		Jan 2016	100	100	100	100	100
		Feb 2016	78	97	121	98	104
		Mar 2016	91	144	163	144	149
		Apr 2016	104	120	180	165	163
		May 2016	99	122	197	201	191
		Jun 2016	98	121	184	201	187
		Jul 2016	123	183	192	251	229
[5a]	% of Time CHX Had A Two-Sided Market	Aug 2015	99.8%	99.6%	99.7%	99.6%	99.7%
		Sep 2015	99.9%	99.9%	99.9%	99.9%	99.9%
		Oct 2015	100.0%	99.9%	99.9%	100.0%	99.9%
		Nov 2015	99.9%	99.9%	99.5%	99.8%	99.7%
		Dec 2015	98.6%	98.3%	98.6%	98.6%	98.5%
		Jan 2016	100.0%	99.9%	99.9%	100.0%	99.9%
		Feb 2016	99.9%	100.0%	100.0%	100.0%	100.0%
		Mar 2016	99.8%	100.0%	100.0%	100.0%	100.0%
		Apr 2016	99.3%	99.9%	100.0%	99.8%	99.9%
		May 2016	85.2%	99.9%	100.0%	100.0%	100.0%
		Jun 2016	73.2%	99.9%	100.0%	100.0%	100.0%
		Jul 2016	74.0%	99.9%	100.0%	100.0%	100.0%
[5b]	% of Time CHX Had A One-Sided Market	Aug 2015	0.1%	0.1%	0.0%	0.2%	0.1%
		Sep 2015	0.0%	0.0%	0.0%	0.0%	0.0%
		Oct 2015	0.0%	0.0%	0.0%	0.0%	0.0%
		Nov 2015	0.0%	0.0%	0.0%	0.2%	0.1%
		Dec 2015	0.0%	0.3%	0.0%	0.0%	0.1%
		Jan 2016	0.0%	0.1%	0.0%	0.0%	0.0%
		Feb 2016	0.0%	0.0%	0.0%	0.0%	0.0%
		Mar 2016	0.2%	0.0%	0.0%	0.0%	0.0%
		Apr 2016	0.2%	0.0%	0.0%	0.0%	0.0%
		May 2016	3.0%	0.0%	0.0%	0.0%	0.0%
		Jun 2016	6.1%	0.0%	0.0%	0.0%	0.0%
		Jul 2016	1.8%	0.0%	0.0%	0.0%	0.0%
[5c]	% of Time CHX Had No Market	Aug 2015	0.1%	0.3%	0.3%	0.1%	0.2%
		Sep 2015	0.0%	0.1%	0.1%	0.0%	0.1%
		Oct 2015	0.0%	0.1%	0.1%	0.0%	0.1%
		Nov 2015	0.1%	0.1%	0.4%	0.0%	0.2%
		Dec 2015	1.4%	1.4%	1.4%	1.4%	1.4%
		Jan 2016	0.0%	0.0%	0.0%	0.0%	0.0%
		Feb 2016	0.1%	0.0%	0.0%	0.0%	0.0%
		Mar 2016	0.0%	0.0%	0.0%	0.0%	0.0%
		Apr 2016	0.5%	0.1%	0.0%	0.2%	0.1%
		May 2016	11.8%	0.1%	0.0%	0.0%	0.0%

No.	Calculation	Month	Symbol				
			SPY	DIA	IWM	QQQ	Control average
			[1]	[2]	[3]	[4]	([2]:[4])
		Jun 2016	20.7%	0.1%	0.0%	0.0%	0.0%
		Jul 2016	24.2%	0.0%	0.0%	0.0%	0.0%
[6a] ...	% of Time CHX Was At The NBB	Aug 2015	16.5%	32.7%	46.9%	58.0%	45.9%
		Sep 2015	24.0%	36.4%	44.7%	67.6%	49.6%
		Oct 2015	30.8%	45.8%	44.3%	74.9%	55.0%
		Nov 2015	24.5%	50.3%	54.0%	79.6%	61.3%
		Dec 2015	29.2%	34.1%	38.3%	71.3%	47.9%
		Jan 2016	23.8%	46.0%	40.2%	70.4%	52.2%
		Feb 2016	15.5%	53.9%	33.7%	65.5%	51.0%
		Mar 2016	18.5%	58.4%	35.6%	66.8%	53.6%
		Apr 2016	18.7%	46.8%	35.9%	60.5%	47.7%
		May 2016	7.0%	44.8%	53.5%	68.5%	55.6%
		Jun 2016	5.4%	47.1%	44.2%	72.8%	54.7%
		Jul 2016	8.2%	45.9%	40.8%	74.1%	53.6%
[6b] ...	% of Time CHX Was At The NBO	Aug 2015	27.9%	39.8%	57.0%	65.6%	54.1%
		Sep 2015	29.7%	36.0%	41.8%	66.7%	48.2%
		Oct 2015	20.9%	41.4%	42.7%	74.0%	52.7%
		Nov 2015	28.7%	39.3%	52.9%	78.2%	56.8%
		Dec 2015	27.1%	35.5%	42.4%	70.0%	49.3%
		Jan 2016	23.3%	52.3%	48.8%	70.4%	57.2%
		Feb 2016	23.2%	55.5%	46.3%	69.1%	57.0%
		Mar 2016	19.0%	58.5%	44.4%	70.0%	57.7%
		Apr 2016	14.0%	44.0%	36.4%	65.8%	48.7%
		May 2016	12.4%	40.4%	49.3%	64.2%	51.3%
		Jun 2016	11.0%	47.3%	48.4%	74.6%	56.8%
		Jul 2016	5.8%	46.0%	34.0%	69.4%	49.8%
[6c]	% of Time CHX Was At The NBB and that CHX Was At The NBO.	Aug 2015	1.0%	8.2%	19.7%	32.5%	20.2%
		Sep 2015	2.0%	10.0%	9.2%	37.1%	18.8%
		Oct 2015	3.0%	14.4%	10.2%	49.8%	24.8%
		Nov 2015	6.0%	14.2%	17.9%	58.1%	30.1%
		Dec 2015	4.4%	9.3%	12.5%	44.8%	22.2%
		Jan 2016	3.3%	19.2%	7.8%	41.8%	22.9%
		Feb 2016	1.0%	24.5%	4.8%	35.4%	21.5%
		Mar 2016	0.5%	29.6%	4.6%	38.0%	24.1%
		Apr 2016	0.2%	15.7%	2.2%	29.9%	15.9%
		May 2016	0.0%	13.5%	17.5%	34.6%	21.9%
		Jun 2016	0.0%	17.0%	12.2%	48.5%	25.9%
		Jul 2016	0.0%	12.6%	4.0%	44.1%	20.3%
[7a] ...	% of Time CHX Was At The NBB And Was The Largest Bid At That Price.	Aug 2015	13.6%	26.2%	37.1%	26.6%	29.9%
		Sep 2015	21.5%	34.0%	40.0%	47.6%	40.6%
		Oct 2015	24.9%	43.8%	36.2%	57.4%	45.8%
		Nov 2015	18.8%	47.9%	39.4%	55.9%	47.7%
		Dec 2015	25.1%	31.7%	27.7%	39.1%	32.8%
		Jan 2016	20.0%	43.6%	32.0%	48.1%	41.2%
		Feb 2016	11.2%	52.7%	28.5%	45.5%	42.2%
		Mar 2016	11.9%	55.7%	28.3%	44.8%	42.9%
		Apr 2016	13.0%	42.2%	31.6%	43.6%	39.1%
		May 2016	1.7%	39.8%	37.9%	50.2%	42.6%
		Jun 2016	2.0%	43.7%	32.2%	48.3%	41.4%
		Jul 2016	2.3%	43.2%	31.7%	48.0%	41.0%
[7b] ...	% of Time CHX Was At The NBO And Was The Largest Offer At That Price.	Aug 2015	24.3%	34.4%	51.2%	39.8%	41.8%
		Sep 2015	27.0%	33.8%	37.8%	46.7%	39.4%
		Oct 2015	16.0%	38.1%	31.3%	44.0%	37.8%
		Nov 2015	22.6%	36.8%	35.1%	53.4%	41.8%
		Dec 2015	23.2%	32.7%	30.6%	36.8%	33.4%
		Jan 2016	20.7%	51.1%	41.3%	50.7%	47.7%
		Feb 2016	18.5%	54.7%	40.8%	49.4%	48.3%
		Mar 2016	12.9%	55.2%	35.3%	51.2%	47.2%
		Apr 2016	8.1%	38.6%	30.8%	45.9%	38.4%
		May 2016	3.8%	36.7%	29.8%	45.2%	37.2%
		Jun 2016	4.6%	44.6%	31.4%	51.8%	42.6%
		Jul 2016	1.1%	42.5%	27.0%	31.0%	33.5%
[7c]	% of Time CHX Was At The NBB And Was The Largest Bid At That Price and that CHX Was At The NBO And Was The Largest Offer At That Price.	Aug 2015	0.2%	5.3%	12.8%	7.1%	8.4%
		Sep 2015	1.1%	8.5%	7.3%	16.7%	10.9%
		Oct 2015	0.9%	12.3%	5.3%	17.7%	11.8%
		Nov 2015	2.3%	12.6%	7.0%	23.0%	14.2%
		Dec 2015	2.9%	8.1%	6.4%	13.7%	9.4%
		Jan 2016	1.9%	17.3%	4.3%	18.5%	13.4%
		Feb 2016	0.3%	23.3%	2.8%	13.9%	13.3%
		Mar 2016	0.1%	26.0%	2.6%	14.0%	14.2%

No.	Calculation	Month	Symbol				
			SPY	DIA	IWM	QQQ	Control average
			[1]	[2]	[3]	[4]	([2]:[4])
		Apr 2016	0.0%	10.9%	1.5%	14.0%	8.8%
		May 2016	0.0%	10.4%	8.0%	15.6%	11.3%
		Jun 2016	0.0%	14.3%	4.8%	18.6%	12.5%
		Jul 2016	0.0%	10.7%	2.8%	10.8%	8.1%

Appendix C: Impact of LTAD on Liquidity Takers

The purpose of this analysis is to show that implementation of LTAD would not materially impact the ability of a random market participant not engaged in a latency arbitrage strategy to take displayed liquidity at CHX. This analysis assumes that LTAD would not materially change order sending behavior of Participants.

For the period of May 2016 through July 2016,[83] the Exchange observed the following with regards to SPY:

- There were a total of 18,316 orders at least partially executed.
- During the same period, the Exchange received 1,278 cancel messages to cancel resting orders after the resting order had been fully executed ("too-late-to-cancel" or "TLTC").
- Of the 1,278 TLTCs, 412 TLTCs (32.24%) were received sooner than or exactly 350 microseconds after the execution ("$\text{TLTC}_{\leq 350}$"), whereas 866 (67.76%) were received later than 350 microseconds after the execution ("$\text{TLTC}_{> 350}$").
- Of the 412 $\text{TLTC}_{\leq 350}$, 392 (95.15%) executions were attributed to SPY latency arbitrage activity while the remaining 20 (4.85%) executions were not.
- Of the 866 $\text{TLTC}_{> 350}$, 780 (90.07%) executions were attributed to SPY latency arbitrage activity while the remaining 86 (9.93%) executions were not.[84]

Thus, if LTAD had been in effect for the period of May 2016 through July 2016, LTAD (1) would have prevented up to 412 orders, virtually all of which the Exchange believes were submitted as part of SPY latency arbitrage activity, from being executed during the 350 microsecond Fixed LTAD Period and (2) would have had a negative impact on only 20 liquidity taking orders not attributed to SPY latency arbitrage activity. These 20 orders comprised 0.11% of the 18,316 orders executed during the period. That is, during the measurement period of 63 trading days, LTAD would have had an adverse effect on approximately one order every three trading days. Thus, LTAD can make a significant contribution to leveling the playing field between liquidity providers and latency arbitrageurs with minimal adverse effect on other liquidity taking orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[85] and furthers the objectives of Section 6(b)(5) in particular,[86] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change would remove impediments and perfect the mechanisms of a free and open market and, in general, protect investors and the public interest by enhancing displayed liquidity and price discovery for NMS securities by minimizing the effectiveness of latency arbitrage strategies that diminish quality and quantity of liquidity. As shown under the CHX ETF Analysis, latency arbitrage lessens competition among orders by dissuading liquidity providers from displaying large and aggressively priced orders, which in turn impairs market efficiency.[87] The Commission has recognized the crucial role that displayed limit orders play in the price discovery process.[88] Thus, the Exchange believes that optimizing liquidity provision on the Exchange will enhance price discovery for NMS securities and, thereby, enhance market efficiency. To this end, LTAD is designed to promote displayed liquidity on the Exchange by giving liquidity providers a small amount of additional time to cancel or adjust orders on the CHX book to comport to the most recent market data before latency arbitrageurs could take such orders at potentially "stale" prices. LTAD is designed to achieve these goals without adversely affecting the ability of virtually all market participants, other than latency arbitrageurs, to access liquidity at CHX.[89] Thus, the Exchange believes that LTAD will encourage liquidity providers to resume posting large aggressively priced orders on the CHX book, which was their practice prior to the beginning of the SPY latency arbitrage activity in January 2016, which will enhance liquidity and optimize price discovery in furtherance of the objectives of Act and in a manner consistent with Regulation NMS, as described below.

The Exchange also believes that the proposed amendments to the MTP order modifier would remove impediments and perfect the mechanisms of a free and open market and, in general, protect investors and the public interest, in that they are designed to avoid certain unintended consequences of LTAD on the MTP functionality. Specifically, since an order would be assigned a sequence number prior to being evaluated pursuant to LTAD,[90] LTAD may result in a newer undelayed order being posted to the CHX book before an older delayed order, which would not otherwise occur today. Under this scenario and assuming that the contra-side orders trigger MTP and the incoming order is marked "N," the current MTP rules would require the incoming older order to be cancelled, whereas the amended MTP handling would require the resting newer order to be cancelled subject to the exception for CHX Only orders described under amended Article 1, Rule 2(b)(3)(F)(iii)(a) and (b). Thus, the Exchange believes that the amended MTP functionality better contemplates LTAD and preserves expected results.

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[83] For the months prior to May 2016 during the Analysis Period, the Exchange did not maintain TLTC data. A limitation of this data is that CHX Market Share and displayed liquidity in SPY and, by extension, order sending activity had all diminished considerably by May 2016. *See supra* Appendix B Calculation Set 1.

[84] *See supra* note 4.

[85] 15 U.S.C. 78f(b).

[86] 15 U.S.C. 78f(b)(5).

[87] *See* Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 at 37499 (June 29, 2005) ("Regulation NMS Adopting Release"), which provides, in pertinent part: "To the extent that competition among orders is lessened, the quality of price discovery for all sizes of orders can be compromised. Impaired price discovery could cause market prices to deviate from fundamental values, reduce market depth and liquidity, and create excessive short-term volatility that is harmful to long-term investors and listed companies. More broadly, when market prices do not reflect fundamental values, resources will be misallocated within the economy and economic efficiency—as well as market efficiency—will be impaired."

[88] *See* Regulation NMS Adopting Release, *id*, at 37526.

[89] *See supra* note 19; *see also supra* Appendix C.

[90] *See supra* note 7.

Moreover, the Exchange submits that the proposed rules for LTAD are not designed to permit unfair discrimination, and would not impose any unnecessary or inappropriate burden on competition. Rather, by neutralizing speed advantages utilized by latency arbitrageurs, LTAD is designed to ensure that liquidity providers resume achieving their goals with respect to their liquidity provision strategies on CHX that, prior to January 2016, resulted in valuable liquidity in securities such as SPY being provided to the marketplace.[91] [92] In addition, LTAD would facilitate the achievement of such goals while having a *de minimis* impact on random liquidity takers not engaged in latency arbitrage activities.[93]

In finding that the rules pertaining to the IEX Delay did not permit unfair discrimination, and would not impose any unnecessary or inappropriate burden on competition, the Commission recognized that displayed limit orders or non-pegged non-displayed limit orders, the types of liquidity LTAD is designed to protect, would not benefit from the symmetric IEX Delay[94] because the purpose of such limit orders is to post or execute consistent with their fixed limit price, as opposed to being repriced by an exchange based on changes to the NBBO.[95] When also considering that displayed limit orders and non-pegged non-displayed limit orders -1- are as vulnerable to latency arbitrage attacks as pegged orders[96] and -2- could only be effectively adjusted by the liquidity provider itself in response to market changes if such orders are provided as part of a broader liquidity provision strategy that utilizes proprietary algorithms to price and size such limit orders,[97] it logically flows that the best way to protect such valuable displayed liquidity[98] is through an asymmetric delay, such as LTAD, that empowers liquidity providers to more efficiently execute their liquidity provision strategies that result in valuable displayed liquidity being provided to the market.[99] Thus, given the importance of this displayed liquidity and the ineffectiveness of symmetric delays in protecting limit orders from latency arbitrage, the Exchange believes that LTAD is narrowly-tailored to address latency arbitrage as applied to limit orders and, thus, any discrimination between liquidity providers and liquidity takers is justified and consistent with the requirements of the Act.[100] Further, LTAD will be applied to all Participants, thus all Participants that provide liquidity in securities subject to LTAD[101] will be able to benefit from the LTAD.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Regulation NMS as LTAD would constitute a *de minimis* intentional access delay and is thereby consistent with the requirements of Rule 600(b)(3) of Regulation NMS.[102] Moreover, the Exchange further believes that LTAD is consistent with Rule 611[103] and Rule 610(d) of Regulation NMS.[104]

Specifically, the Exchange believes that the proposed rule change is consistent with the "immedia[cy]" requirement of Rule 600(b)(3) as LTAD is a *de minimis* intentional access delay and thereby compatible with the Exchange having an "automated quotation" under Rule 600(b)(3) and thus a "protected quotation" under Rule 611.[105] Given that LTAD would enhance liquidity and optimize price discovery in NMS securities, would apply to all Participants and would not unfairly discriminate among Participants as it is narrowly tailored to minimize the effectiveness of latency arbitrage strategies with respect to limit orders, all in furtherance of the objectives of Section 6(b)(5) of the Act, as discussed above, the Exchange believes that LTAD would not impair fair and efficient access to the Exchange's protected quotation.[106]

Moreover, the Exchange believes that LTAD is consistent with the requirements of Rule 611.[107] As described above,[108] a portion of a Routable Order may be immediately routed away to execute against away protected quotations, with the unrouted remainder being delayed before being permitted to execute against an order resting on the CHX book at a price inferior to the away protected quotations by relying on the proposed Immediate Feedback derived from the immediate routed portion to ignore the away protected quotation. Given that LTAD is *de minimis* in the context of Rule 600(b)(3), it logically flows that LTAD should also be considered *de minimis* for the purposes of the "simultaneously routed" Intermarket Sweep Order ("ISO") requirement under Rule 611(b)(6). Thus, the Exchange submits that a delay caused by LTAD between the routing of one or more ISOs to satisfy better priced protected quotation(s) and the delayed execution of a related order through such protected quotation(s) is consistent with the requirements of Rule 611(b)(6).

Similarly, a portion of a Routable Order may be immediately routed away to execute against away protected quotations with the unrouted remainder being delayed before posting to the CHX book at a price that crosses such away protected quotations. This could result if the resting order on the CHX book that resulted in the unrouted remainder being delayed was cancelled before the unrouted remainder were released from LTAD. Under this scenario, given that LTAD is *de minimis* in the context of Rule 600(b)(3), it logically flows that the *de minimis* delay caused by LTAD between the routing of one or more ISOs to satisfy away protected quotations and the actual display of the related order at a price that crosses such away protected quotations is permissible and consistent with the requirements of Rule 610(d).[109]

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[91] *See supra* note 11; *see also supra* Appendix A.

[92] Since the Entry Event, the Exchange has observed latency arbitrage activity in other S&P-correlated securities traded on CHX, which has also negatively impacted displayed liquidity in those securities.

[93] *See supra* note 19; *see also supra* Appendix C.

[94] *See* IEX Approval Order, *supra note* 16, at 41157.

[95] *See id.*

[96] *See supra* note 3.

[97] *See supra* note 10.

[98] *See supra* Appendix A.

[99] *See supra* notes 11 and 12.

[100] The Exchange further notes that discrimination between liquidity providers and liquidity takers, in furtherance of the objectives of the Act, is not without substantial precedence in the NMS. The Commission has previously approved various initiatives that discriminate between liquidity providers and liquidity takers. For example, many national securities exchanges, including CHX, utilize the "maker/taker" fee model, which discriminates between liquidity providers and takers for the purpose of incentivizing market participants to provide liquidity to, and/or take liquidity from, the exchange, depending on the exchange's specific implementation. *See e.g.,* Bats BYX Fee Schedule; *see also* Section E.1 of the CHX Fee Schedule. Similarly, the CHX offers a Market Data Revenue Sharing program, whereby only certain liquidity providers could receive a market data revenue rebate in proportion to the quality of liquidity provided. *See* Section P.1 of the CHX Fee Schedule. In fact, the IEX Delay discriminates between liquidity providers with resting pegged orders and liquidity takers, thereby necessarily discriminating between liquidity providers that utilize pegged orders and those that do not utilize pegged orders.

[101] *See supra* note 37.

[102] *See* 17 CFR 242.600(b)(3).

[103] *See* 17 CFR 242.611.

[104] *See* 17 CFR 242.610(d).

[105] *See* Final Interpretation, *supra* note 9, at 40792.

[106] *See id.*

[107] 17 CFR 242.611.

[108] *See supra* Example 3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that any burden on competition is necessary and appropriate in furtherance of the purposes of Section 6(b)(5) of the Act because LTAD is functionality that seeks to enhance liquidity and optimize price discovery by deemphasizing speed as a key to trading success in order to further serve the interests of investors and thereby removes impediments and perfects the mechanisms of a free and open market.[110]

The Exchange further notes that market participants will continue to be able to obtain CHX book data via the SIPs or through the Exchange's proprietary book feed, the CHX Book Feed,[111] without delay as the Exchange does not propose to delay any outbound messages or market data. As such, the Exchange submits that any burden on competition, while necessary and appropriate in furtherance of the purposes of that Act, has been minimized.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2016–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2016–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2016–16 and should be submitted on or before October 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[112]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22790 Filed 9–21–16; 8:45 am]

BILLING CODE 8011–01–P

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[109] *See* "Division of Trading and Markets: Responses to Frequency Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS." U.S. Securities and Exchange Commission, 4 April 2008. Web. 20 June 2016 *http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm* ("Question 5.02"); *see also* CHX Article 20, Rule 6(c)(3).

[110] *See supra* note 15.

[111] *See* CHX Article 4, Rule 1.

[112] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78861; File No. SR–NYSEArca–2016–129]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.35P (Auctions) Regarding Indicative Match Price

September 16, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 9, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to, through its wholly-owned corporation NYSE Arca Equities, Inc. ("NYSE Arca Equities"), amend Rule 7.35P (Auctions) regarding Indicative Match Price. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.35P, which governs how Auctions operate on the Exchange's Pillar trading platform. Specifically, the Exchange proposes to amend Rule 7.35P(a)(8) regarding Indicative Match Price. Under Rule 7.35(a)(8) [sic], Indicative Match Price means the best price at which the maximum volume of shares, including non-displayed quantity of Reserve Orders, is tradable in the applicable auction, subject to the Auction Collars. The Exchange proposes to specify, as proposed in Rule 7.35P(a)(8)(F), that unless the Indicative Match Price is based on the midpoint of an Auction NBBO, if the Indicative Match Price is not in the MPV[4] for the security, it would be rounded to the nearest price at the applicable MPV.[5]

The Exchange initially filed to amend the definition of Indicative Match Price in a filing that is currently pending with the Commission.[6] Although the proposed change was included in the Tick Pilot System Functionality Filing, the anticipated rounding scenarios for the Indicative Price Match would apply to all securities traded on the Exchange, not just Tick Pilot Securities. The technology change related to the rounding of the Indicative Match Price is scheduled to be implemented within 30 days of the date of this filing and prior to October 3, 2016, the implementation date of the Tick Size Pilot Program. The Exchange is therefore filing this proposed rule change to ensure that both the functionality and the rules of the Exchange are consistent with one another when the Exchange introduces the technology change. The proposed rule change would also add more certainty regarding the calculation of the Indicative Match Price as it would be rounded to the nearest price at the applicable MPV.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed amendment to Rule 7.35P(a)(8) would remove impediments to and perfect the mechanism of a free and open market and a national market system as it provides transparency regarding when the Exchange would round the Indicative Match Price if it is not in the MPV for an applicable security. In addition, the Exchange believes that the proposal to implement this change for all securities, not just Tick Pilot Securities, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure consistent treatment regarding the calculation of Indicative Match Price.

The calculation of the Indicative Match Price is essential to executing the maximum volume of shares in an auction and the Exchange believes adopting a rounding methodology when calculating the Indicative Match Price, as proposed herein, will promote transparency, clarity and certainty to the rule, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to make an amendment to Rule 7.35P regarding the calculation of Indicative Match Price for orders executed in Auctions on the Exchange's Pillar trading platform.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, this proposed rule change would provide certainty and transparency to its rules regarding the Indicative Match Price. Moreover, according to the Exchange, waiver of the operative delay would allow it to introduce technology related to this proposed rule change, which would be applicable to all securities, within 30 days of the date of this filing. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[13]

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[4] The minimum price variation ("MPV") for quoting and entry of orders in securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for quoting and entry of orders is $0.0001. *See* Arca Rule 7.6.

[5] The Indicative Match Price is currently calculated without any rounding, as provided in Arca Rule 7.35P(a)(8)(A)–(E).

[6] *See* SR–NYSEArca–2016–123 filed on August 25, 2016 (the "Tick Pilot System Functionality Filing").

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–129 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–129. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–129, and should be submitted on or before October 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22791 Filed 9–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32264; 812–14432]

Northern Lights Fund Trust and Dearborn Capital Management, LLC; Notice of Application

September 16, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under Section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from Section 15(a) of the Act and Rule 18f–2 under the Act, as well as from certain disclosure requirements in Rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Northern Lights Fund Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Dearborn Capital Management, LLC, a limited liability company organized under Illinois law and registered as an investment adviser under the Investment Advisers Act of 1940 ("the "Adviser," and, collectively with the Trust, the "Applicants").

FILING DATES: The application was filed March 11, 2015 and amended on April 14, 2016, and June 20, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 11, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Trust Counsel: JoAnn Strasser, Esq., Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, OH 43215 and Trust: James P. Ash, Esq., Gemini Fund Services, LLC, 80 Arkay Drive, Suite 110, Hauppauge, NY 11788.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Adviser will serve as the investment adviser to the Funds pursuant to an investment advisory agreement with the Trust (the "Advisory Agreement").[1] The Adviser will provide the Funds with continuous and

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[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

[1] Applicants request relief with respect to any existing and any future series of the Trust and any other registered open-end management company or series thereof that: (a) Is advised by the Adviser or its successor or by a person controlling, controlled by, or under common control with the Adviser or

comprehensive investment management services subject to the supervision of, and policies established by, each Fund's board of trustees ("Board"). The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a "Sub-Adviser" and collectively, the "Sub-Advisers") the responsibility to provide the day-to-day portfolio investment management of each Fund, subject to the supervision and direction of the Adviser. The primary responsibility for managing the Funds will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire certain Sub-Advisers pursuant to Sub-Advisory Agreements and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under Section 15(a) of the Act and Rule 18f–2 under the Act.[2] Applicants also seek an exemption from the Disclosure Requirements to permit a Fund to disclose (as both a dollar amount and a percentage of the Fund's net assets): (a) The aggregate fees paid to the Adviser; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, "Aggregate Fee Disclosure").

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Fund shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Advisory Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22793 Filed 9–21–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before October 24, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Small Business Administration Surety Bond Guarantee Program was created to encourage surety companies to provide bonding for small contractor's. The information collection on this form from surety companies will be used to update status of successfully completed contracts and to provide a final accounting of contrator and surety fees due to SBA.

Title: Quarterly Contract Completion Report.

Description of Respondents: Surety Companies.

Form Number: 2461.

Annual Responses: 92.

Annual Burden: 92.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–22849 Filed 9–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before October 24, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

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its successor (each, also an "Adviser"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a "Fund" and collectively, the "Funds"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in Section 2(a)(3) of the Act, of the Trust, a Fund, or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Funds, or as an investment adviser or sub-adviser to any series of the Trust other than the Funds ("Affiliated Sub-Adviser").

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: SBA Forms 1405 and 1405A are used by Small Business Administration (SBA) examiners as part of their examination of licensed small business investment companies (SBICs). This information is collected from SBIC'S Stockholders and partners and provides independent third party confirmation of an SBIC's representations concerning its owners. The information helps SBA to evaluate the SBIC'S with applicable laws and regulations concerning capital requirements.

Title: Stockholders Confirmation Corporation Ownership, Confirmation Partnership.

Description of Respondents: Investment Companies.

Form Numbers: 1405, 1405A.

Annual Responses: 500.

Annual Burden: 500.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–22857 Filed 9–21–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty Second RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Thirty Second RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held October 24, 2016 from 09:00 a.m.–05:00 p.m. and October 25–27 from 8:30 a.m.–05:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirty Second RTCA SC–213 Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS). The agenda will include the following:

Monday, October 24

Working Group meetings

Tuesday, October 25

Plenary discussion (sign-in at 08:00 a.m.)

1. Introductions and administrative items
2. Review and approve minutes from last full plenary meeting
3. Review of terms of reference and update work product dates
4. WG1, WG2, WG3 and WG4 status updates
5. Industry updates
6. Working group discussion

Wednesday, October 26

Plenary discussion

1. Working group discussions

Thursday, October 27

Plenary discussion

1. Working group discussion
2. Administrative items (new meeting location/dates, action items etc.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 19, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–22825 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twentieth RTCA SC–223 Aeronautical Mobile Airport Communication System Plenary Calling Notice

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Twentieth RTCA SC–223 Aeronautical Mobile Airport Communication System Plenary Calling Notice.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twentieth RTCA SC–223 Aeronautical Mobile Airport Communication System Plenary Calling Notice.

DATES: The meeting will be held November 08–09, 2016, 09:00 a.m.–05:00 p.m. and November 10, 2016 09:00 a.m.–12:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or (202) 330–0654, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twentieth RTCA SC–223 Aeronautical Mobile Airport Communication System Plenary Calling Notice. The agenda will include the following:

November 8 & 9, 9:00 a.m. to 5:00 p.m., November 10, 9:00 a.m. to 12:00 p.m.

1. Welcome, Introductions, Administrative Remarks
2. Review of Previous Meeting Notes and Action Items
3. Review of Current State of Industry Standards
   a. ICAO WG–I
   b. AEEC IPS Sub Committee
4. Current State of Industry Activities
   a. SESAR Programs
   b. ESA IRIS Precursor
   c. Any Other Activities
5. IPS Technical Discussions
   a. Review of Profiling Report on IPv6 Functions and Corresponding RFCs
   b. Review of IPS RFC Profiles
   c. Prioritization of Additional IETF RFCs for Profiling
6. Any Other Topics of Interest
7. Plans for Next Meetings
8. Review of Action Items and Meeting Summary

9. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 19, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–22826 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0110; Notice No. 2016–18]

Hazardous Materials: Damaged, Defective, Recalled Lithium Cells or Batteries or Portable Electronic Devices

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety advisory notice.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is issuing a safety advisory notice to inform the public of the risks associated with transporting damaged, defective, or recalled lithium cells or batteries or portable electronic devices (PEDs), including Samsung Galaxy Note 7 smartphone devices recently recalled by the U.S. Consumer Product Safety Commission's (CPSC) [Recall No. 16–266]. PHMSA is issuing this safety advisory notice in conjunction with the CPSC recall to advise members of the public who wish to carry Samsung Galaxy Note 7 subject to CPSC Recall no. 16–266 aboard aircraft that they must take all of the following precautions:

- Turn off the device;
- Disconnect the device from any charging equipment;
- Disable all applications that could inadvertently activate the phone (*e.g.,* alarm clock);
- Protect the power switch to prevent its unintentional activation; and
- Keep the device in carry-on baggage or on your person. (Do not place in checked baggage.)

FOR FURTHER INFORMATION CONTACT: Kevin Leary, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366–8553.

SUPPLEMENTARY INFORMATION:

Carriage Aboard Aircraft by Passengers and Crew

Passengers or crew may only carry portable electronic devices on aircraft under the conditions of § 175.10(a)(18) of the HMR. Except as detailed below, electrical devices, such as batteries and battery-powered devices, which are likely to create sparks or generate a dangerous evolution of heat must not be transported in passenger or cargo aircraft, whether as cargo, carry-on, or in checked baggage, unless packaged in a manner, that would preclude such an occurrence. On September 2, 2016, Samsung issued a statement to consumers regarding the Samsung Galaxy Note 7. According to CPSC, "Samsung has received 92 reports of the batteries overheating in the U.S., including 26 reports of burns and 55 reports of property damage, including fires in cars and a garage." Consequently, as a safety measure, CPSC has urged consumers to turn off, stop charging, and stop using these devices, and the FAA has advised such devices be turned off and not used or charged aboard aircraft and not be placed in checked baggage.

Federal hazardous materials transportation law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to "prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce." The Secretary delegated this authority to PHMSA in 49 CFR 1.97(b). In accordance with § 173.21(c) of the HMR, electrical devices such as batteries and battery-powered devices, which are likely to create sparks or generate a dangerous evolution of heat, are forbidden for transportation unless packaged in a manner which precludes such an occurrence. Therefore, passengers or crew may only transport on board an aircraft a Samsung Galaxy Note 7 subject to CPSC Recall no. 16–266 under the following conditions:

- Turn off the device;
- Disconnect the device from any charging equipment;
- Disable all Applications that could inadvertently activate the phone (*e.g.* alarm clock);
- Protect the power switch to prevent its unintentional activation; and
- Keep the device in carry-on baggage or on your person. (Do not place in checked baggage.)

Additional Information

Additional information pertinent to the traveling public is available through the DOT Safe Travel Web site (see *http://phmsa.dot.gov/safetravel/batteries*) and through the FAA Pack Safe Web site (see *http://www.faa.gov/Go/PackSafe*). For additional information on returning your device to the manufacturer, please call 1–800–SAMSUNG or 1–800–726–7864. For additional information on the recall please visit the Consumer Product Safety Commission's Web site at *www.cpsc.gov.*

Shipments as Cargo

Lithium cells or batteries or portable electronic devices, that have been damaged or identified by the manufacturer as being defective for safety reasons, and have the potential of producing a dangerous evolution of heat, fire, or short circuit may only be transported by highway, rail or vessel in accordance with the provisions of 49 CFR 173.185(f) or under the conditions of a Special Permit or Approval issued by PHMSA's Associate Administrator for Hazardous Materials Safety. See *http://www.phmsa.dot.gov/hazmat/approvals-permits* for additional information on obtaining a Special Permit or Approval. For additional information please contact Kevin Leary at (202) 366–8553 or the Hazardous Materials Information Center:

- *Tel:* 1–800–467–4922 or 202–366–4488
- *Email: infocntr@dot.gov*

Issued in Washington, DC, on September 16, 2016.

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

[FR Doc. 2016–22777 Filed 9–21–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 19, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of

1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 24, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Bureau of the Fiscal Service

OMB Control Number: 1530–0013.

Type of Review: Revision of a currently approved collection.

Title: FS Form 2887, Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

Abstract: FS Form 2887 is used to enroll individuals in the Treasury SVC program; to obtain authorization to initiate debit and credit entries to individual's accounts; and to facilitate collection of any delinquent amounts. FS Form 5752 is used to obtain authorization from a cardholder to disclose information considered private under Treasury regulations and the Privacy Act.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 10,001.

OMB Control Number: 1530–0020.

Type of Review: Extension of a currently approved collection.

Title: FS Form 2888, Application Form for U.S. Department of Treasury Accountable Official Stored Value Card (SVC).

Abstract: FS Form 2888 is used to collect information from accountable officials requesting enrollment in the Treasury SVC program in their official capacity, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts to load value on the cards, and to facilitate collection of any delinquent amounts that may become due and owing as a result of the use of the cards.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 1,250.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–22876 Filed 9–21–16; 8:45 am]

BILLING CODE 4810–AS–P

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Endangered Status for Five Species From American Samoa; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2015–0128; 4500030113]

RIN 1018–AZ97

Endangered and Threatened Wildlife and Plants; Endangered Status for Five Species From American Samoa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973, as amended, for two endemic American Samoan land snails (*Eua zebrina* and *Ostodes strigatus*), the American Samoa distinct population segment of the friendly ground-dove, the Pacific sheath-tailed bat, (South Pacific subspecies) (*Emballonura semicaudata semicaudata*), and the mao (*Gymnomyza samoensis*). The effect of this regulation will be to add these species to the List of Endangered and Threatened Wildlife.

DATES: This rule becomes effective October 24, 2016.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/pacificislands.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581.

FOR FURTHER INFORMATION CONTACT: Mary Abrams, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Honolulu, HI 96850, by telephone 808–792–9400 or by facsimile 808–792–9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. Critical habitat is to be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act.

What this rule does. This rule will finalize the listing of two American Samoa land snails, *Eua zebrina* (no common name) and *Ostodes strigatus* (no common name), the American Samoa distinct population segment (DPS) of the friendly ground-dove (*Gallicolumba stairi*), and the Pacific sheath-tailed bat (South Pacific subspecies) (*Emballonura semicaudata semicaudata;* "bat" or "Pacific sheath-tailed bat" hereafter) and the mao (*Gymnomyza samoensis*) as endangered species.

Delineation of critical habitat requires, within the geographical area occupied by the species, identification of the physical or biological features essential to the species' conservation. Information regarding the life functions and habitats associated with these life functions is complex, and informative data are largely lacking for the five species from American Samoa. A careful assessment of the areas that may have the physical or biological features essential for the conservation of the species and that may require special management considerations or protections, and thus qualify for designation as critical habitat, will require a thorough assessment. We require additional time to analyze the best available scientific data in order to identify specific areas appropriate for critical habitat designation and to prepare and process a proposed rule. Accordingly, critical habitat is not determinable at this time.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting a species continued existence. One or more of the five American Samoa species are experiencing population-level impacts as a result of the following current and ongoing threats:

- Habitat loss and fragmentation or degradation due to agriculture and urban development, nonnative ungulates, and nonnative plants.
- Collection for commercial purposes (snails only).
- Predation by nonnative snails and nonnative flatworms (snails only).
- Predation by feral cats and rats.
- Small numbers of individuals and populations.

Existing regulatory mechanisms do not adequately address these threats. Environmental effects from climate change are likely to exacerbate many of these threats, and may become a direct threat to all five species in the future.

Peer review and public comment. We sought comments on our proposal from 16 independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We also considered all comments and information received during the public comment periods and public hearing.

Previous Federal Action

Please refer to the proposed listing rule, published in the **Federal Register** on October 13, 2015 (80 FR 61568), for previous Federal actions for these species prior to that date. The publication of the proposed listing rule opened a 60-day public comment period that closed on December 14, 2015. We published a public notice of the proposed rule on October 21, 2015, in the local Samoa News newspaper, at the beginning of the comment period. On January 5, 2016 (81 FR 214), we published a notice reopening the comment period for an additional 30 days in order to allow interested parties more time to comment on the proposed rule. In that same document, we announced the date and time of the public hearing and informational meeting held on January 21, 2016, Tutuila Island, American Samoa. The second comment period closed on February 4, 2016. In total, we accepted public comments on the proposed rule for 90 days.

Summary of Comments and Recommendations

We solicited comments during the 60-day public comment period (80 FR 61568, October 13, 2015), in a reopened comment period between January 5 and February 4, 2016 (81 FR 214, January 5, 2016), and during a public hearing held in American Samoa on January 21, 2016. We also contacted appropriate Federal and Territorial agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. In addition, for the Pacific sheath-tailed bat and the mao, we contacted the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) management and scientific authorities competent to issue comparable documentation in the countries of Samoa, Fiji, Tonga, and Vanuatu seeking comment on the proposed rule. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below.

During the comment periods, we received a total of 16 comment letters on the proposed listing of the 5 species from American Samoa. We received helpful information from the National Park of American Samoa about their surveys, monitoring, and mapping of natural resources in the park, and we have incorporated this information where relevant. In this final rule, we only address those comments directly relevant to the proposed listing of the five species. We received several comments that were not germane to the proposed listing of the five species (for example, information on other American Samoa species not included in the proposed rule); such comments are not addressed in this final rule.

One comment letter each was from the American Samoa Government Office of the Governor, the American Samoa Government Office of Samoan Affairs, and a Federal agency; and six comment letters were from individuals. Seven letters were responses requested from peer reviewers. The American Samoa Government Office of the Governor requested a public hearing and informational meetings regarding the proposed rule, which we provided, as described above. During the public hearing, four individuals made oral comments on the proposed rule.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 16 individuals with scientific expertise on American Samoa and bats, birds, and snails of South Pacific islands and their habitats, biological needs, and threats, including familiarity with the five species, the geographic region in which these species occur, and principles of conservation biology. We received responses from seven of these individuals.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of the five species. All seven peer reviewers generally supported our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Two peer reviewers agreed particularly with our evaluation of scientific data informing our assessment of the conservation status of the Pacific sheath-tailed bat. Similarly, three peer reviewers agreed particularly with our assessment of the conservation status of the two snails, *Eua zebrina* and *Ostodes strigatus,* and one peer reviewer agreed particularly with our status assessment of the mao and friendly ground-dove. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate (see also Summary of Changes from Proposed Rule).

General Peer Reviewer Comments

(1) Comment: One peer reviewer disagreed with the conclusion that climate change is a projected threat and not a current threat to the species. The reviewer asked whether the Service's conclusion is that (a) climate change is not yet occurring and consequently is not a current threat; or (b) climate change is already occurring, but it is not yet affecting these species. The reviewer cited various recent local, regional, and world-wide evidence that climate change is occurring (National Oceanic and Atmospheric Administration (NOAA)–National Climatic Data Center 1960–2013; Australian Bureau of Meteorology (BOM) & Commonwealth Scientific and Industrial Research Organization (CSIRO) 2011, Volumes 1 & 2; 2014; Pirhalla *et al.* 2011; Monahan and Fisichelli 2014) and that it is already having major impacts to species and ecosystems (Keener *et al.* 2012, Intergovernmental Panel on Climate Change (IPCC) 2014).

Our Response: We agree with the reviewer that observed increases in air and sea temperatures, carbon dioxide concentrations, and sea levels exist in American Samoa and the region, and that these are current conditions. We further agree that the trajectory of observed changes in climate is unlikely to change in the coming decades. However, neither of the choices provided by the reviewer accurately reflect our conclusion with regard to whether we consider climate change to be a current threat to these species. Although we cannot predict the timing, extent, or magnitude of specific impacts, we do expect the effects of climate change to exacerbate the current threats to these species, such as habitat loss and degradation.

Peer Review Comments on the Pacific Sheath-Tailed Bat

(2) Comment: Two peer reviewers provided additional references and personal observations regarding the foraging behavior and habitat of the species *E. semicaudata* and other bats in the family Emballonuridae (Kalko 1995, pp. 262–265; Gorreson *et al.* 2009, p. 336; Valdez *et al.* 2011, pp. 306–307; Marques *et al.* 2015, pp. 6–EV–9–EV).

Our Response: We have incorporated all new relevant information regarding the bat's foraging behavior and foraging habitat in this final rule.

(3) Comment: One peer reviewer reported the discovery of previously unknown caves with appropriate habitat for the Pacific sheath-tailed bat on Tau Island. The commenter also reported anecdotal sightings of the Pacific sheath-tailed bat on Tutuila and Tau Islands.

Our Response: We appreciate this new information. We hope that future surveys will yield confirmed observations of bats using the caves on Tau. Given the anecdotal nature of the sightings on Tutuila and Tau and the similarity in flight behavior between small bats and the white-rumped swiftlet (*Aerodramus spodiopygius;* common in American Samoa), the possibility exists that these anecdotal observations were of birds, not bats. We hope to learn of confirmed sightings that would indicate that the Pacific sheath-tailed bat may still occur on Tutuila and Tau.

(4) Comment: Two peer reviewers provided additional information regarding the impacts of goats on the habitat of the Pacific sheath-tailed bat. One of the reviewers pointed out that overgrazing of the forest understory by goats had resulted in little or no recruitment of canopy tree species in areas of known populations of the bat on some small islands in the Lau Group in Fiji and on Aguiguan Island in the Northern Mariana Islands, where the endangered Mariana subspecies (*E. semicaudata rotensis*) occurs, as documented by Gorreson *et al.* (2009, p. 339). The peer reviewer noted earlier predictions that the effects of overgrazing would result in the demise of the forests that are so important for the species (*e.g.,* Palmeirim *et al.* 2005, p. 46).

The same reviewer commented that grazing by goats greatly minimizes clutter resulting from a well-developed shrub layer, thereby opening foraging spaces for bats under the canopy. In addition, the reviewer cited reports that the bat was doing well in highly overgrazed forests on Yaqueta and Aiwa

Islands (Fiji) (Palmeirim *et al.* 2005, pp. 28–29), and Aguiguan Island (Valdez *et al.* 2011, p. 302).

Lastly, the reviewer added that, generally, a total release of the grazing pressure may allow rapid growth of shrubs and concomitant increase in understory clutter and thus potentially reduce foraging space for the Pacific sheath-tailed bat. Consequently, the peer reviewer suggested that any goat control efforts should be carefully planned to balance the importance of recruitment of tree canopy species and foraging spaces under the canopy.

Our Response: We appreciate the information provided by the reviewers regarding the potential impacts of goat grazing on the bat and its habitat in Fiji. We agree with the reviewer's observation that, although grazing and browsing by goats may benefit the bat in the near term by maintaining an open understory that provides foraging habitat (*e.g.,* Esselsytn *et al.* 2004, p. 307; Palmeirim *et al.* 2005, pp. 28–29), in the long term the activities of goats are likely to result in the loss of the forest on which the bat depends by inhibiting recruitment of native forest trees and facilitating dispersal of nonnative invasive plants (Esselsytn *et al.* 2004, p. 307; Palmeirim *et al.* 2005, p. 46; Berger *et al.* 2011, pp. 36, 38, 40, 42–47; Commonwealth of the Northern Mariana Islands (CNMI) Statewide Assessment and Resource Strategy (SWARS) 2010, p. 15; Kessler 2011, pp. 320–323; Pratt 2011, pp. 2, 36; Welch *et al.* 2016). We, therefore, continue to regard habitat destruction and degradation by goat browsing as a threat to the continued existence of the bat in Fiji, although we recognize that this is a threat that must be addressed with care to maintain the open understory that provides foraging habitat for the bat.

(5) Comment: One peer reviewer noted that the genetic differences between the South Pacific subspecies *E. s. semicaudata* and the Palau and Mariana subspecies, *E. s. palauensis* and *E. s. rotensis,* respectively, are greater than typically reported between mammalian subspecies. The reviewer suggested that this level of divergence increases the conservation value of the remaining populations of *E. s. semicaudata.*

The reviewer also commented that the description of the current Pacific sheath-tailed bat distribution in Fiji is overly optimistic and suggested revision to a more conservative description based on the bat's likely extirpation on Viti Levu, an island that represents more than half the land area in Fiji.

The same reviewer also requested clarification in the discussion regarding the threat to the bat from metapopulation breakdown, and in particular requested clarification regarding the location of significant source populations in Fiji. Finally, the reviewer commented that the future impact of sea level rise on populations of the Pacific sheath-tailed bat is not likely to be restricted to high islands and in fact is likely to be even greater on low islands, such as low limestone islands where this species is present.

Our Response: We agree that genetic differentiation underscores the need to conserve the South Pacific subspecies of the Pacific sheath-tailed bat. We have incorporated the information on the bat's distribution in Fiji into this final rule, and we have clarified the discussion regarding the metapopulation breakdown threat to the bat. The continued decline of the only significant source populations of Pacific sheath-tailed bat (on large islands in Fiji, especially the Viti Levu Group) greatly diminishes the probability of recolonization and persistence within Fiji as well as throughout the remainder of its range. Of particular note, the bat is currently considered to be extirpated or nearly extirpated on the largest Fijian island where the bat was once considered common. Regarding the portion of the reviewer's comment on the impact of sea level rise, we agree that any impacts of future sea level rise on the Pacific sheath-tailed bat in Fiji are likely to be worse on low islands than on high islands where the bat is known to occur.

Peer Review Comments on the American Samoa DPS of the Friendly Ground-Dove

(6) Comment: One peer reviewer cited a recent study that reported a detection of the friendly ground-dove at a single location on Tau Island (Judge *et al.* 2013, pp. 14–15). The reviewer further commented that, although a possible range extension to Tau Island would be a positive change in the distribution of this rare species, the report of a single detection on another island would not change the Service's determination of threatened or endangered status, given three extensive bird surveys conducted on Tau Island in 1975–76, 1986, and 2011 (Amerson *et al.* 1982, Engbring and Ramsey 1989, Judge *et al.* 2013) and various additional surveys conducted there by the American Samoa Department of Marine and Wildlife Resources.

Our Response: We agree that a single detection does not necessarily signify a range extension of American Samoa DPS of the friendly ground-dove to include Tau Island. In addition to the past and ongoing surveys cited by the reviewer, recent bird banding efforts conducted on Tau Island between 2013 and 2015 also failed to report the friendly ground-dove (Pyle *et al.* 2014, pp. 7, 19; Pyle *et al.* 2015, pp. 7, 21). On the other hand, this report does suggest the possible movement of friendly ground-doves from Ofu and Olosega Islands to Tau Island.

(7) Comment: One peer reviewer stated that the friendly ground-dove has not been pushed into higher elevation areas throughout its range (as asserted by Watling (2001, p. 118)), and still occurs at low elevations in some areas in Samoa, such as Salelologa lowland forest on Savaii and on Nuutele Island off the coast of Upolu. The reviewer also provided specific information indicating that predation by the Polynesian rat (*Rattus exulans*) should be considered a threat to the friendly ground-dove in American Samoa in addition to that of the black rat (*R. rattus*).

Our Response: In the proposed rule, we stated that the loss of lowland and coastal forest has been implicated as a limiting factor for populations of the friendly ground-dove, and as a result, the species has been pushed into more disturbed areas or forested habitat at higher elevations (Watling 2001, p. 118). The two areas cited by the reviewer, Nuutele Island and Saleloga, are sites where native lowland forest is intact and provides habitat that can support populations of the friendly ground-dove. However, our analysis of the available information indicates that these areas are exceptional, and that the loss of lowland and coastal forests remains a threat to the friendly ground-dove throughout its range, including in American Samoa. The fact that the species is known from only those lowland areas in Samoa that remain mostly forested provides supporting evidence of this ongoing threat. In American Samoa, lowland and coastal habitats on Ofu and Olosega have largely been converted to villages, grasslands, or coconut plantations, and the loss of these habitats to agriculture and development is expected to continue. We have added predation by the Polynesian rat as a threat to the friendly ground-dove in this final rule.

Peer Review Comments on *Eua zebrina* and *Ostodes strigatus*

(8) Comment: One peer reviewer commented that collection for scientific purposes is not a current threat to *Eua zebrina* and expressed doubt that it contributed to the decline of this species. The peer reviewer added that

collection of *Eua zebrina* for other purposes (*e.g.*, commercial, educational, or recreational) is also not a current threat.

The same reviewer commented that predation by the rosy wolf snail (*Euglandina rosea*) cannot be considered the major existing threat to the native snail fauna in American Samoa in the absence of a quantitative evaluation of the importance of rosy wolf snail predation relative to other threats such as habitat destruction and predation by rats. The reviewer further stated that predation by the rosy wolf snail may be less of a threat to adult individuals of *O. strigatus* than to *E. zebrina*, because the former may be protected by its operculum (trap-door-like structure closing the shell aperture). The reviewer added that the rosy wolf snail feeds on small snails by swallowing them whole, but feeds on large snails by attacking them via the open shell aperture. The commenter further noted that both *E. zebrina* and *O. strigatus* adults are considered large from the perspective of the rosy wolf snail. If *O. strigatus* can close the aperture with the operculum when threatened by the rosy wolf snail, the predator may find access difficult; but whether this is the case is not known. Lastly, the reviewer noted that whether juveniles (*i.e.*, small snails) are more susceptible is also not known. The reviewer also stated that the protection provided by the Tutuila section of the National Park of American Samoa (NPSA) does not apply to *Ostodes strigatus* because this species is only known from the western part of Tutuila, which is not within the NPSA's boundaries. Finally, the reviewer commented that the statement "all live snails were found on understory vegetation beneath intact forest canopy" is probably correct for most *E. zebrina*, but should not be attributed to all Samoan land snails.

Our Response: Regarding the threat of over-collection, we agree with the reviewer that collection for scientific purposes is not a current threat to *Eua zebrina* or *Ostodes strigatus*. We erroneously included "overutilization for scientific purposes" in our assessment of threats to these species in the proposed rule, and have removed this factor from the Summary of Factors Affecting *E. zebrina* section in this final rule. However, we maintain that collection for scientific purposes likely contributed to a reduction in the number of *E. zebrina* in the wild (Hadfield 1986, p. 322). We recognize that at the time the majority of collections were made for scientific purposes, *E. zebrina* was neither at risk of extinction nor did the numbers collected increase the risk of its extinction, and we have found no evidence that the species is collected for educational purposes. We disagree with the peer reviewer's comment that collecting for commercial or recreational purposes is not a current threat. There is evidence, albeit mostly in the past, of the practice of using snail shells to make decorative items for personal adornments and for sale or display. Importantly, however, the proposed rule provided evidence of the current sale of *Eua zebrina* and other Pacific Island snails on the internet. Therefore, we maintain that collection for commercial or recreational purposes is a current threat to *Eua zebrina*.

We consider the threat of predation by the rosy wolf snail to be one of several threats to the survival of *Eua zebrina*, and have made this clarification in the final rule (see Summary of Factors Affecting *Eua zebrina*, below). While the operculum of adult individuals of *O. strigatus* may offer protection from predation by the rosy wolf snail, we maintain our finding that predation by the rosy wolf snail is a current threat to *O. strigatus* based on the vulnerability of small, juvenile individuals of this species to being swallowed whole by predatory snails. We disagree with the reviewer's statement regarding the lack of protection provided to *O. strigatus* by the NPSA. Information in our files indicates the occurrence of *O. strigatus* within the boundaries of the NPSA (Miller 1993, p. 23). Finally, we agree with the reviewer's comment that the statement "all live snails were found on understory vegetation beneath intact forest canopy" may hold true for *E. zebrina*, but should not be attributed to all Samoan land snails, and we have made this correction in this final rule.

(9) Comment: One peer reviewer commented that funding should be allocated to evaluate the status of the two snail species and others prior to listing. The reviewer also suggested the increasing prevalence of the rat lungworm (*Angiostrongylus cantonensis*) throughout the Pacific poses an unknown, but likely serious, threat of disease to land snails. The reviewer added that further studies are desperately needed.

Our Response: We evaluated the status of the two snails prior to listing them. We found them to be candidates for listing in May 2005 and reviewed the available information on them each year in our annual Candidate Notice of Review. To issue our proposal to list these species under the Act, we evaluated their status and found that they met the definition of endangered. We agree that additional data regarding the five species from American Samoa would be desirable. However, under the Act, we are required to make listing determinations solely on the basis of the best *available* scientific and commercial data [emphasis ours] (sections 4(a)(1) and 4(b)(1)(A) of the Act). We appreciate the reviewer raising the potential threat of disease to native land snails such as *E. zebrina* and *O. strigatus* posed by the rat lungworm. However, at this time, we do not have information that leads us to conclude that the rat lungworm poses a current threat to the two snails.

Public Comments

In general, commenters did not express strong support for or opposition to the proposed listing. Some commenters expressed concerns regarding the potential impacts of the proposed listing on public- and private-sector projects and on cultural practices. Other commenters suggested that additional information on the five species was needed. Our responses are provided below.

Comments From States/Territories

(10) Comment: The Governor of American Samoa and two public commenters expressed concern that listing the five species as endangered could affect such activities as land clearing, development, planned wind power production, and cultural practices.

Our Response: We understand that concern exists about the effects on land use and cultural practices of listing species as threatened or endangered under the Act. Once a species is listed as endangered under the Act certain protective measures apply. These measures include prohibitions under section 9(a)(1) of the Act that make take (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) of listed wildlife species illegal and requirements for Federal agencies to consult with the Service under section 7(a)(2) of the Act to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species. See Available Conservation Measures, below, for detailed descriptions of requirements and prohibitions, respectively, under sections 7 and 9 of the Act.

We encourage any project proponents or landowners to work closely with the Service if activities on their land may negatively affect listed species. If a Federal agency action is associated with the activity (*e.g.*, funding, permit issuance, or other support or authorization), the Federal agency is required to consult with the Service under section 7 (a)(2) of the Act. If there is no Federal involvement in the activity, we can help those project proponents or landowners determine whether a habitat conservation plan (HCP) or safe harbor agreement (SHA) may be appropriate. These plans or agreements provide for the conservation of the listed species while providing the project proponent or landowner with a permit for incidental take of the species during the course of otherwise lawful activities, such as those mentioned in the Governor's comment letter, including cultural practices that may affect any of these five species.

(11) Comment: The Governor of American Samoa requested assistance from the Service in making improvements to Territorial law in order to allow local government agencies to work with the Service to conserve listed species and their habitats.

Our Response: We recognize and welcome the Governor's request for assistance. The Service and the American Samoa Government have met to discuss the necessary improvements to Territorial law required for the Service's conservation assistance programs to States or Territories for threatened and endangered species in accordance with section 6 of the Act, and we remain available to provide further assistance as needed.

(12) Comment: A member of the Office of Samoan Affairs supported our assessment of the threat of cats and rats to the five species. The member added that disease carried and spread by cats and rats contributed to the endangered status of the five species.

Our Response: We appreciate the comment by the Office of Samoan Affairs. Our review of the best scientific and commercial data available does not indicate that disease is currently a factor affecting the continued existence of the five species. We welcome any information on this topic that becomes available in the future.

Comments From the General Public

(13) Comment: One commenter asked how species are protected once listed as endangered. Another commenter asked how the Service works to reestablish populations of species after they are listed as endangered.

Our Response: Once a species is added to either of the Lists of Endangered and Threatened Wildlife and Plants, it is afforded protection under the Act. For example, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species; section 9(a)(1) of the Act prohibits the take of listed wildlife species (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these). Activities to reestablish and recover listed species, and details of sections 7 and 9 of the Act, are described below, under Available Conservation Measures.

(14) Comment: One commenter stated that the use of insecticides is contributing to the decline of the Pacific sheath-tailed bat by reducing prey populations such as mosquitoes and other insects.

Our Response: We evaluated the effects of pesticide use on the Pacific sheath-tailed bat in the proposed rule (80 FR 61568, October 13, 2015). The use of pesticides may negatively affect the Pacific sheath-tailed bat as a result of direct toxicity and the reduction in the availability of insect prey. Pesticides are known to adversely affect bat populations, either by secondary poisoning when bats consume contaminated insects or by reducing the availability of insect prey (Hutson *et al.* 2001, p. 138; Mickleburgh *et al.* 2002, p. 19). Pesticides may have contributed to declines and loss of the Mariana subspecies of Pacific sheath-tailed bat on islands where pesticides were once applied in great quantities (Guam, Saipan, and Tinian) (Wiles and Worthington 2002, p. 17).

In American Samoa and Samoa, current levels of pesticide use are likely lower than several decades ago when their use, particularly during the years in which taro was grown on large scales for export (1975–1985), coincided with the decline of bats in both places and has been implicated as the cause (Tarburton 2002, p. 107). However, Grant *et al.* (1994, pp. 135–136) dismissed the role of insecticides in the decline of the bat in American Samoa based on the absence of a similar population crash in the insectivorous white-rumped swiftlet (*Aerodramus spodiopygius*) and the limited use of agricultural and mosquito-control pesticides. On the island of Taveuni in Fiji, where bat populations have persisted at low levels over the last 10 years (Palmeirim *et al.* 2005, p. 62, Malotaux 2012, in litt.), several locals reported that pesticide use was quite widespread, and their use may be similar on other Fijian islands (Malotaux 2012, in litt.). We do not have information about pesticide use in Tonga or Vanuatu. The best available information does not indicate that pesticide use is a current threat to the Pacific sheath-tailed bat or that it is likely to become a threat in the future.

(15) Comment: One commenter stated that flooding or high water levels during Hurricanes Ofa (1990) and Val (1991) may have washed out snails such as *E. zebrina* and *O. strigatus* from stream areas.

Our Response: In the proposed rule, we considered the effects of natural disturbances such as hurricanes and their associated impacts under *Factor E: Other Natural and Manmade Factors Affecting Its Continued Existence* for both *E. zebrina* and *O. strigatus.* The information we have does not indicate that either snail species was washed out of stream areas, per se, by heavy rains and flooding associated with hurricanes Ofa and Val; these are land snails, and they do not inhabit aquatic environments. However, hurricanes likely have adverse impacts on the habitat of *E. zebrina* and *O. strigatus* by destroying vegetation, opening the canopy, and thus modifying the availability of light and moisture, and creating disturbed areas conducive to invasion by nonnative plant species (Elmqvist *et al.* 1994, p. 387; Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539–540; Lugo 2008, pp. 373–375, 386). Such impacts destroy or modify habitat elements (*e.g.,* stem, branch, and leaf surfaces, undisturbed ground, and leaf litter) required to meet the snails' basic life-history requirements. In addition, high winds and intense rains from hurricanes can also dislodge individual snails from the leaves and branches of their host plants and deposit them on the forest floor where they may be crushed by falling vegetation or exposed to predation by nonnative rats and snails (Hadfield 2011, pers. comm.). Therefore, we consider the threat of flooding and high water levels associated with the high wind and intense rains caused by hurricanes to be a factor in the continued existence of *E. zebrina* and *O. strigatus.*

(16) Comment: Two commenters recommended that the proposed rulemaking needed to be explained to traditional leaders, local people, and to a larger audience than attended the public hearing and informational meeting.

Our Response: We conducted a public hearing and public informational meeting on January 21, 2016, at which Service staff were available to answer questions from the public with Samoan language translation provided at both events. We published a notice of the availability of the proposed rule in the local newspaper and accepted public comments on the proposed rule for a total of 90 days. We sent notification of publication of the proposed rule and public comment periods by mail to the Congressional Representative, American Samoa Government agencies, and local stakeholders. We conducted numerous radio and television interviews at local stations and provided information on the five species and the rulemaking process. We made a presentation and answered questions regarding the proposed rulemaking during a meeting with the members of the Office of Samoan Affairs on January 25, 2016, and we also conducted meetings with the American Samoa Government Department of Agriculture, Department of Marine and Wildlife Resources, Office of the Attorney General; and Federal agency partners including the National Park of American Samoa, NOAA–National Ocean Service, and the U.S. Department of Agriculture Natural Resource Conservation Service.

(17) Comment: Two commenters recommended further study of the species proposed for listing as endangered.

Our Response: We are required to make our determination based on the best scientific and commercial data available at the time of our rulemaking. We considered the best scientific and commercial data available regarding the five species to evaluate their potential status under the Act. We solicited peer review of our evaluation of the available data, and peer reviewers supported our analysis. Science is a cumulative process, and the body of knowledge is ever-growing. In light of this fact, the Service will always take new research into consideration. If new scientific information supports revision of this rule in the future, the Service will issue a proposed rule consistent with the Act and our established work priorities at that time.

(18) Comment: One commenter questioned why species thought to be extirpated in American Samoa, such as the mao, are being considered for listing. The commenter also expressed concern regarding the reintroduction of such species.

Our Response: We previously determined that the mao warranted listing under the Act (79 FR 72450; December 4, 2014) and present our determination of its status as endangered in this final rule. A species may become extirpated in a portion of its range and be listed throughout its range. The mao occurred historically on Tutuila, but is now considered to be extirpated there. If the mao occurs once again on Tutuila, whether as a result of natural dispersal or a reintroduction program, this species will be subject to the protections of the Act there.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. Once a species is listed as endangered or threatened under the Act, conservation measures provided to such species include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. For more information, please see Available Conservation Measures, below. The Service is required under section 4(f)(1) of the Act to prepare recovery plans for newly listed species, unless we determine that such a plan will not promote the conservation of the species. Reestablishing a threatened or endangered species in its former range is often necessary to enable or sustain recovery. Successful species recovery efforts necessitate the Service working collaboratively with Federal, State, and local agencies, conservation organizations, the business community, landowners, and other concerned citizens. Therefore, we look forward to working collaboratively with all stakeholders in efforts to conserve the mao and other listed species.

Summary of Changes From Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the peer reviewers and public on the proposed listings for the five species. This final rule incorporates the following substantive changes to our proposed rule, based on the comments we received:

(1) We have added habitat destruction or modification by feral goats as a threat to the continued existence or survival of the Pacific sheath-tailed bat in Fiji (see the discussion below under Pacific sheath-tailed bat, Summary of Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range).

(2) We erroneously included "overutilization for scientific purposes" in our assessment of threats to *Eua zebrina* in the proposed rule and have removed this factor from the Summary of Factors Affecting *E. zebrina* in this final rule.

Other than the two changes just discussed and minor changes in response to recommendations, in this final rule, we made no substantive changes to the proposed rule.

Background

Species Addressed in This Final Rule

The table below (table 1) provides the common name, scientific name, listing status, and range for the species that are the subjects of this final rule.

TABLE 1—SPECIES ADDRESSED IN THIS FINAL RULE

Common name [Samoan name or other local name]	Scientific name	Listing status	Locations where listed
		Mammals	
Pacific sheath-tailed bat (South Pacific subspecies) [beka beka, peapea vai, tagiti].	*Emballonura, semicaudata, semicaudata.*	Endangered	American Samoa, Fiji, Samoa, Tonga, Vanuatu.
		Birds	
Mao [maomao]	*Gymnomyza, samoensis.*	Endangered	American Samoa, Samoa.
Friendly (shy) ground-dove [tuaimeo]	*Gallicolumba stairi*	Endangered	American Samoa DPS.
		Snails	
No common name	*Eua zebrina*	Endangered	American Samoa.
No common name	*Ostodes strigatus*	Endangered	American Samoa.

Please refer to the proposed listing rule (80 FR 61568; October 13, 2015) for geographic descriptions of the Samoan Archipelago, Samoa, Kingdom of Tonga, Republic of Fiji, Republic of Vanuatu, Territory of the Wallis and Futuna Islands and for additional factual details of the factors affecting the species, such as descriptions of nonnative plant species that affect the species' habitat. Our assessment evaluated the biological status of the five species and threats affecting their continued existence. The assessment was based upon the best available scientific and commercial data and, except where noted below (and in the Summary of Changes From Proposed Rule, above), has not changed as a result of the new information obtained during the comment periods.

Pacific sheath-tailed bat (South Pacific subspecies), *Emballonura semicaudata* ssp. *semicaudata*, Peapea vai (American Samoa), Tagiti (Samoa), Beka beka (Fiji)

The Pacific sheath-tailed bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution primarily in the tropics (Nowak 1994, pp. 90–91). A Samoan specimen was first described by Peale in 1848 as *Vespertilio semicaudatus* (Lyon and Osgood 1909, p. 259). The species was later included in the genus *Emballonura* (Temminck 1838; cited in the Integrated Taxonomic Information System (ITIS) 2014) and is now known as *Emballonura semicaudata* (Smithsonian Institution 1909; Tate and Archbold 1939, p. 8). This species is a small bat. Males have a forearm length of about 1.8 in (45 millimeters (mm)), and weigh approximately 0.2 ounces (oz) (5.5 grams (g)), and females are slightly larger in size and weight (Lemke 1986, p. 744; Nowak 1994, p. 91; Flannery 1995, p. 326; Uyehara and Wiles 2009, p. 5).

The Pacific sheath-tailed bat was once common and widespread in Polynesia, eastern Melanesia, and Micronesia and is the only insectivorous bat recorded from a large part of this area (Hutson *et al.* 2001, p. 138). Sheath-tailed bats are rich brown to dark brown above and paler below (Walker and Paradiso 1983, p. 211). The common name "sheath-tailed bat" refers to the nature of the tail attachment: The tail pierces the tail membrane, and its tip appears completely free on the upper surface of the membrane (Walker and Paradiso 1983, p. 209). The Pacific sheath-tailed bat (all subspecies) is listed as Endangered in the 2015 IUCN (International Union for Conservation of Nature) Red List (Bonaccorso and Allison 2008). Endangered is IUCN's second most severe category of extinction assessment, which equates to a very high risk of extinction in the wild. IUCN criteria include the rate of decline, population size, area of geographic distribution, and degree of population and distribution fragmentation; however, IUCN rankings do not confer any actual protection or management.

Four subspecies of Pacific sheath-tailed bats are currently recognized: *E. s. rotensis,* endemic to the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI); listed as endangered in 2014 (80 FR 59497, October 1, 2015), and referred to here as the Mariana subspecies); *E. s. sulcata* in Chuuk and Pohnpei; *E. s. palauensis* in Palau; and *E. s. semicaudata* in American Samoa, Samoa, Tonga, Fiji, and Vanuatu (Koopman 1997, pp. 358–360; Oyler-McCance *et al.* 2013, pp. 1,030–1,036), referred to here as the South Pacific subspecies. Recent analysis found greater genetic differences between *E. s. rotensis, E. s. palauensis,* and *E. s. semicaudata* than typically reported between mammalian subspecies (Oyler-McCance *et al.* 2013, p. 1,030). Hereafter, "bat" or "Pacific sheath-tailed bat" refers to the South Pacific subspecies unless otherwise noted.

All subspecies of the Pacific sheath-tailed bat appear to be cave-dependent, roosting during the day in a wide range of cave types, including overhanging cliffs, crevices, lava tubes, and limestone caves (Grant 1993, p. 51; Grant *et al.* 1994, pp. 134–135; Hutson *et al.* 2001, p. 139; Palmeirim *et al.* 2005, p. 28). Large roosting colonies appear fairly common in the Palau subspecies, but smaller aggregations may be more typical of at least the Mariana subspecies and perhaps other species of *Emballonura* (Wiles *et al.* 1997, pp. 221–222; Wiles and Worthington 2002, pp. 15, 17). The Mariana subspecies, which persists only on the island of Aguiguan (CNMI), appears to prefer relatively large caves (Wiles *et al.* 2009, p. 15 in O'Shea and Valdez 2009). The limestone cave ecosystem of the Mariana subspecies on Aguiguan is characterized by constant temperature, high relative humidity, and no major air movement (O'Shea and Valdez 2009, pp. 77–78). Such basic habitat data are lacking for the South Pacific subspecies of Pacific sheath-tailed bat, but may be important because the alteration of climate conditions has been implicated in the abandonment of roost caves by other bat species (Hutson *et al.* 2001, p. 101). Pacific sheath-tailed bats are commonly found sharing caves with swiftlets (*Aerodramus* spp.) (Lemke 1986, p. 744; Hutson *et al.* 2001, p. 139; Tarburton 2002, p. 106; Wiles and Worthington 2002, p. 7, Palmeirim *et al.* 2005, p. 28). All subspecies of the Pacific sheath-tailed bat are nocturnal and typically emerge around dusk to forage on flying insects (Hutson *et al.* 2001, p. 138; Craig *et al.* 1993, p. 51). The Mariana Islands subspecies forages almost entirely in forests (native and nonnative) near their roosting caves (Esselstyn *et al.* 2004, p. 307). Other subspecies in Micronesia have been observed foraging beneath the canopy of dense native forest (on Pohnpei) and over town streets (Palau and Chuuk) (Bruner and Pratt 1979, p. 3). The bat's preferred foraging habitat is mature well-structured forest with a high and dense canopy (Kalko 1995, pp. 262–265; Esselstyn *et al.* 2004, p. 307; Palmeirim *et al.* 2005, p. 29; (Gorreson et al. 2009, p. 336; Valdez et al. 2011, pp. 306–307; Marques et al. 2015, pp. 6–EV–9–EV).

In American Samoa, Amerson *et al.* (1982, p. 74) estimated a total population of approximately 11,000 Pacific sheath-tailed bats in 1975 and 1976. A precipitous decline of the bat on the island of Tutuila has been documented since 1990 (Grant *et al.* 1994, p. 134; Koopman and Steadman 1995, pp. 9–10; Helgen and Flannery 2002, pp. 4–5). Knowles (1988, p. 65) recorded about 200 in 1988, and in 1993, observers caught one bat and saw only three more (Grant *et al.* 1994, p. 134). A single bat was also observed on two occasions in a small cave north of Alao (Grant *et al.* 1994, pp. 134–135). Additional small caves and lava tubes have been checked for bats and swiftlets, however, Tutuila is entirely volcanic and does not have the extensive limestone cave systems that provide bat roosting habitat in the Mariana Islands and other Pacific island groups (Grant *et al.* 1994, p. 135). Two individuals were last observed in the cave at Anapeapea Cove on the north shore of Tutuila in 1998 (Hutson *et al.* 2001, p. 138). Surveys conducted by the Department of Marine and Wildlife Resources (DMWR) in 2006 failed to detect the presence of this species (DMWR 2006, p. 53). In an attempt to ascertain whether the species is still extant, DMWR conducted surveys consisting of acoustic sweeps and cave checks on all main islands in 2008 and 2012, and no bats were detected (Fraser *et al.* 2009, p. 9; U.R. Tulafono 2011, in litt.; DMWR 2013, in litt.). Based on its decline and the lack of detections since it was last seen in 1998, this species is thought to be nearly extirpated (if not already extirpated) in American Samoa (DMWR 2006, p. 54; Uyehara and Wiles

2009, p. 5). DMWR continues to conduct acoustic surveys in search of the Pacific sheath-tailed bat in American Samoa (Miles 2015a, in litt.).

In Samoa, the Pacific sheath-tailed bat is known from the two main islands of Upolu and Savaii, but the species has experienced a severe decline over the last several decades, and has been observed only rarely since Cyclones Ofa (1990) and Val (1991) (Lovegrove *et al.* 1992, p. 30; Park *et al.* 1992, p. 47; Tarburton 2002, pp. 105–108). This species was previously abundant on Upolu with an individual cave estimated to support several thousand individuals (Ollier *et al.* 1979, pp. 22, 39). A survey of 41 lava tube caves and other locations on Upolu and Savaii conducted from 1994 to 1997 detected a total of 5 individuals at two sites, which had declined to 2 individuals total by the end of the survey (Hutson 2001, p. 139; Tarburton 2002, pp. 105–108, Tarburton 2011, p. 38). In Samoa, the Pacific sheath-tailed bat occupies sea caves and lava tubes located from the coast up to elevations of 2,500 ft (762 m) that range from 49 ft (15 m) to more than 2,130 ft (650 m) in length; vary in height and width, number of openings, and degree of branching; and may be subject to rockfalls and flooding during high rain events (Tarburton 2011, pp. 40–49).

In Tonga, the distribution of the Pacific sheath-tailed bat is not well known. It has been recorded on the island of Eua and Niaufoou (Rinke 1991, p. 134; Koopman and Steadman 1995, p. 7), and is probably absent from Ata and Late (Rinke 1991, pp. 132–133). In 2007, ten nights of acoustic surveys on Tongatapu and Eua failed to record any detections of this species (M. Pennay pers. comm. in Scanlon *et al.* 2013, p. 456). Pennay describes Eua as the place most likely to support the Pacific sheath-tailed bat because of the island's large tracts of primary forest and many rocky outcrops and caves, but he considers the bat to be extremely rare or extirpated from both islands (M. Pennay pers. comm. in Scanlon *et al.* 2013, p. 456).

In Fiji, the Pacific sheath-tailed bat is distributed throughout the archipelago, on large islands such as Vanua Levu and Taveuni, medium-sized islands in the Lau group (Lakeba, Nayau, Cicia, Vanua Balavu), and small islets such as Yaqeta in the Yasawa group and Vatu Vara and Aiwa in the Lau group (Palmeirim *et al.* 2005, pp. 31–32). Pacific sheath-tailed bats in Fiji roost in lava tubes and limestone caves of varying length and width, beneath rock outcrops, and in cave-like areas formed by irregularly shaped boulders located in areas along the coast and up to 6.2 mi (10 km) inland (Palmierim *et al.* 2007, pp. 1–13). Running water or pools of water are a common occurrence in inland caves with streams running through or coastal caves that are tidally influenced (Palmierim *et al.* 2007, pp. 1–13). Habitat surrounding roost sites includes undisturbed forest, secondary forest, cultivated areas, and forested cliffs (Palmierim *et al.* 2007, pp. 1–13). The species was reported as common some decades ago on the small, volcanic island of Rotuma, a Fijian dependency, approximately 372 mi (600 km) from the Fiji archipelago (Clunie 1985, pp. 154–155). Although widely distributed, the species clearly has suffered a serious decline since the 1950s as evidenced by a contraction of its range and a decline in density and abundance on the islands where it still occurs (Flannery 1995, p. 327; Palmeirim *et al.* 2005, p. 31). In 2000 to 2001, bats were absent or present in diminished numbers in many of the caves known previously to be occupied on 30 Fijian islands, and villagers reported that small bats, presumably Pacific sheath-tailed bats, were no longer commonly seen (Palmeirim *et al.* 2005, p. 31).

The species is predicted to be extirpated or nearly so on Kadavu, Vanua Levu, and Fiji's largest island, Viti Levu, where it was known to be widespread until the 1970s (Palmeirim *et al.* 2005, p. 31; Scanlon *et al.* 2013, p. 453). Field observations during the 2000 to 2001 surveys documented a single large colony of several hundred individuals on Yaqeta Island in the Yasawa group and a large colony on Vatu Vara Island in the Lau group, but otherwise only a few to dozens of individuals scattered among caves on small and remote islands in the Lau group (Palmeirim *et al.* 2005, pp. 55–62). Scanlon *et al.* 2013 (p. 453) revisited the large cave colony on Yaqeta between 2007 and 2011 and described it as without any evidence of any recent use by bats (*e.g.*, odor, fresh guano) and probably abandoned. The loss of the Yaqeta colony and the species' overall declining trend across the archipelago led Scanlon *et al.* 2013 (p. 456) to infer a reduction in population size of greater than 80 percent over the last 10 years. The most important remaining sites for the protection of this species are likely those on small and mid-sized islands in Lau where bats still occur (Palmeirim *et al.* 2007, p. 512).

In Vanuatu, the Pacific sheath-tailed bat is known from two museum specimens, one collected in 1929 and one collected before 1878, both on the main island of Espiritu Santo (Helgen and Flannery 2002, pp. 210–211). No subsequent expeditions have recorded sheath-tailed bats, suggesting that this species was either extirpated or perhaps never actually occurred in Vanuatu (Medway and Marshall 1975, pp. 32–33; Hill 1983, pp. 140–142; Flannery 1995, p. 326; Helgen and Flannery 2002, pp. 210–211; Palmeirim *et al.* 2007, p. 517). For example, Medway and Marshall (1975, p. 453) detected seven other small, insectivorous bats (family Microchiroptera) in Vanuatu, but failed to observe the Pacific sheath-tailed bat, possibly as a result of survey sites and methods. However, the Vanuatu provenance of the two specimens is not in question (Helgen and Flannery 2002, p. 211). The current disjunct distribution of the Pacific sheath-tailed bat (all subspecies) is suggestive of extinctions (Flannery 1995, p. 45), and the possible extirpation of the South Pacific subspecies from Vanuatu could be an example of this possibility (Helgen and Flannery 2002, p. 211). The bat's status in Vanuatu is unknown, and a basic inventory of Vanuatu's bat fauna is lacking (Helgen and Flannery 2002, p. 211).

In summary, the Pacific sheath-tailed bat, once widely distributed across the southwest Pacific islands of American Samoa, Samoa, Tonga, and Fiji, has undergone a significant decline in numbers and contraction of its range. Reports of possible extirpation or extremely low numbers in American Samoa and Samoa, steep population declines in Fiji, and the lack of detections in Tonga and Vanuatu, suggest that the Pacific sheath-tailed bat is vulnerable to extinction throughout its range. The remaining populations of the Pacific sheath-tailed bat continue to experience habitat loss from deforestation and development, predation by introduced mammals, and human disturbance of roosting caves, all of which are likely to be exacerbated in the future by the effects of climate change (see Summary of Factors Affecting the Pacific Sheath-tailed Bat discussion below). In addition, low population numbers and the breakdown of the metapopulation equilibrium across its range render the remaining populations of Pacific sheath-tailed bat more vulnerable to chance occurrences such as hurricanes.

Summary of Factors Affecting the Pacific Sheath-Tailed Bat

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the

Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Destruction and Modification by Deforestation

Deforestation has caused the destruction and modification of foraging habitat of the Pacific sheath-tailed bat as a result of the loss of cover and reduction of available insect prey. The loss of native plant diversity associated with the conversion of native forests to agriculture and other uses usually results in a corresponding reduction in the diversity and number of flying insects (Hespenheide 1975, pp. 84, 96; Waugh and Hails 1983, p. 212; Tarburton 2002, p. 107). Deforestation results from logging, agriculture, development, and hurricanes (Government of Samoa 2001, p. 59; Wiles and Worthington 2002, p. 18). Based on the preference of the Mariana subspecies for foraging in forested habitats near their roost caves, Wiles *et al.* (2011, p. 307) predict that past deforestation in the Mariana archipelago may be a principal factor in limiting their current population to the island of Aguiguan, which has healthy native forest. Similarly, in Fiji, most sheath-tailed bat colonies are found roosting in caves in or near good forest (*e.g.,* closed canopy, native forest) (Palmeirim *et al.* 2005, pp. 36, 44); however, much of it has been lost on the large Fijian islands (Palmeirim *et al.* 2007, p. 515).

Deforestation has been extensive and is ongoing across the range of the Pacific sheath-tailed bat. On the island of Tutuila, American Samoa, agriculture and development cover approximately 24 percent of the island and are concentrated in the coastal plain and low-elevation areas where loss of forest is likely to have modified foraging habitat for sheath-tailed bats (American Samoa Community College (ASCC) 2010, p. 13). In Samoa, the amount of forested area declined from 74 to 46 percent of total land area between 1954 and 1990 (Food and Agricultural Organization (FAO) 2005 in litt.). Between 1978 and 1990, 20 percent of all forest losses in Samoa were attributable to logging, with 97 percent of the logging having occurred on Savaii (Government of Samoa 1998 in Whistler 2002, p. 132). Forested land area in Samoa continued to decline at a rate of roughly 2.1 percent or 7,400 ac (3,000 ha) annually from 1990 to 2000 (FAO 2005 in litt.). As a result, there is very little undisturbed, mature forest left in Samoa (Watling 2001, p. 175; FAO 2005 in litt.).

Today, only 360 ac (146 ha) of native lowland rainforests (below 2,000 ft or 600 m) remain on Savaii and Upolu as a result of logging, agricultural clearing, residential clearing (including relocation due to tsunami), and natural causes such as rising sea level and hurricanes (Ministry of Natural Resources and Environment (MNRE) 2013, p. 47).

On Upolu, direct or indirect human influence has caused extensive damage to native forest habitat (above 2,000 ft or 600 m) (MNRE 2013, p. 13). Although forested, almost all upland forests on Upolu are largely dominated by introduced species today. Savaii still has extensive upland forests, which are for the most part undisturbed and composed of native species (MNRE 2013, p. 40). Although the large Fijian islands still have some areas of native forest, much of it has been lost (*e.g.,* 17 percent between 1990 and 2000; FAO 2005 in litt.), and commercial logging continues (Palmeirim *et al.* 2007, p. 515). The best available information does not provide the current status of native forests and rates of forest loss in Tonga or Vanuatu. Native forests are preferred foraging habitat of the Pacific sheath-tailed bat, and deforestation is occurring in Fiji (where the last relatively large population occurs), and in Samoa, and has occurred in American Samoa. Therefore, we conclude that habitat destruction and modification by deforestation is a current threat to the species. This threat is concentrated in Fiji and Samoa, which comprise roughly 62 percent of the land area and occupy the center of the bat's range.

Habitat Destruction and Modification by the Feral Goats

Overgrazing by nonnative feral goats has resulted in the destruction and degradation of forests on island ecosystems (Esselsytn *et al.* 2004, p. 307; Palmeirim *et al.* 2005, p. 46; Berger *et al.* 2011, pp. 36, 38, 40, 42–47; CNMI–SWARS 2010, p. 15; Kessler 2011, pp. 320–323; Pratt 2011, pp. 2, 36; Welch *et al.* 2016). Overgrazing of the forest understory by goats resulted in little or no recruitment of canopy tree species in areas of known populations of the Pacific sheath-tailed bat on small islands in the Lau Group in Fiji (Palmeirim *et al.* 2005, p. 46) and on Aguiguan Island in the Northern Mariana Islands, where the endangered Mariana subspecies (*E. semicaudata rotensis*) occurs (Gorreson *et al.* 2009, p. 339). Palmeirim *et al.* (2005, p. 46) predicted that continued overgrazing would result in the demise of the forests that are so important for the Pacific sheath-tailed bat. Despite the reported negative impacts of goat browsing on tree recruitment, the current amount of well-developed forest canopy habitat and availability of food resources suggest that the bat is currently able to persist on islands where feral goat browsing is occurring (Esselsytn *et al.* 2004, p. 307; Palmeirim *et al.* 2005, pp. 28–29). However, because the direct and indirect impacts of goat browsing on the preferred foraging habitat of the bat are currently occurring and expected to continue into the future in Fiji, we conclude that habitat destruction and degradation by goat browsing is a threat to the continued existence of the bat in Fiji.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

American Samoa

The National Park of American Samoa (NPSA) was established to preserve and protect the tropical forest and archaeological and cultural resources, to maintain the habitat of flying foxes, to preserve the ecological balance of the Samoan tropical forest, and, consistent with the preservation of these resources, to provide for the enjoyment of the unique resources of the Samoan tropical forest by visitors from around the world (Pub. L. 100–571, Pub. L. 100–336). Under a 50-year lease agreement between local villages, the American Samoa Government, and the Federal Government, approximately 8,000 ac (3,240 ha) of forested habitat on the islands of Tutuila, Tau, and Ofu are protected and managed, including suitable foraging habitat for the Pacific sheath-tailed bat (NPSA Lease Agreement 1993).

Samoa

As of 2014, a total of approximately 58,176 ac (23,543 ha), roughly 8 percent of the total land area of Samoa (285,000 ha) was enlisted in terrestrial protected areas, with the majority located in five national parks covering a total of 50,629 ac (20,489 ha), overlapping several sites known to be previously occupied by the bat (Tarburton 2002, pp. 105–107; Tarburton 2011, pp. 43–46).

Fiji

Fiji currently has 23 terrestrial protected areas covering 188 sq mi (488 sq km) or 2.7 percent of the nation's land area (Fiji Department of Environment 2014, pp. 20–21). Most notably, on Taveuni Island, the Bouma National Heritage Park (3,500 ac (1,417 ha)), Taveuni Forest Reserve (27,577 ac (11,160 ha)), and Ravilevu Reserve (9.934 ac (4,020 ha)) may contain caves and could provide important foraging habitat for the Pacific sheath-tailed bat (Fiji Department of Environment 2011; Naikatini 2015, in litt.; Scanlon 2015a, in litt.). Additional areas of remnant forest and important bat habitat are also managed informally under traditional custodial management systems (Scanlon 2015a, in litt.).

Summary of Factor A

Based on our review of the best available scientific and commercial information, habitat destruction and degradation by deforestation, as a result of logging and land-clearing for agriculture and other land-uses, is occurring throughout the range of the Pacific sheath-tailed bat. Although the conservation efforts described above provide some protection from timber harvesting and forest clearing for agriculture and development within protected areas, they do not provide protection of all of the sheath-tailed bat's habitat from these activities, or from grazing and browsing by feral goats or habitat degradation and destruction by hurricanes, such that listing is not warranted. Habitat destruction and modification and range curtailment are current threats to the Pacific sheath-tailed bat that are likely to persist in the future.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the analysis for our proposed rule, we had no information indicating that the Pacific sheath-tailed bat is collected for commercial, recreational, scientific, or educational purposes. We have received no new information. When this final listing becomes effective (see **DATES**, above), research and collection of this species will be regulated through permits issued under section 10(a)(1)(A) of the Act.

Factor C: Disease or Predation

Predation by Nonnative Mammals

Predation by nonnative mammals (mammals that occur in an area as a result of introduction by humans) is a factor in the decline of the Pacific sheath-tailed bat throughout its range. Terrestrial predators may be able to take the bat directly from its roosts, which are often in exposed sites such as shallow caves, rock overhangs, or cave entrances. Domestic and feral cats (*Felis catus*) can capture low-flying bats; cats have been documented to wait for bats as they emerge from caves and capture them in flight (Tuttle 1977 in Palmeirim *et al.* 2005, p. 33; Ransome 1990 in Palmeirim *et al.* 2005, p. 33; Woods *et al.* 2003, pp. 178, 188). Consequently, even a few cats can have a major impact on a population of cave-dwelling bats (Palmeirim *et al.* 2005, p. 34).

Of the predators introduced to Fiji, cats are the most likely to prey on bats (Palmeirim *et al.* 2005, pp. 33–34). On Cicia Island in the Lau group in Fiji, Palmeirim *et al.* (2005, p. 34) observed a cat next to the entrance of a cave where Pacific sheath-tailed bats roosted, far from any human settlement. On Lakeba (Lau), a cave that once harbored a large colony of Pacific sheath-tailed bats is now empty and called Qara ni Pusi (cave of the cat; (Palmeirim *et al.* 2005, p. 34)). Feral cats are also present on Tutuila and on the Manua Islands in American Samoa, (Freifeld 2007, pers. comm.; Arcilla 2015, in litt.). Feral cats have also been documented in Samoa, Tonga, and are likely present in Vanuatu (Atkinson and Atkinson 2000, p. 32; Freifeld 2007, pers. comm.; Arcilla 2015, in litt.).

Rats (*Rattus* spp.) may also prey on the Pacific sheath-tailed bat. Rats are omnivores and opportunistic feeders and have a widely varied diet consisting of nuts, seeds, grains, vegetables, fruits, insects, worms, snails, eggs, frogs, fish, reptiles, birds, and mammals (Fellers 2000, p. 525; Global Invasive Species Database 2011). Rats are known to prey on non-volant (young that have not developed the ability to fly) bats at roosting sites and can be a major threat to bat colonies (Wiles *et al.* 2011, p. 306). Of several nonnative rats found on islands in the Pacific, black rats (*R. rattus*) likely pose the greatest threat to Pacific sheath-tailed bats because of their excellent climbing abilities (Palmeirim 2015, in litt.). Although we lack direct evidence of black rats preying on Pacific sheath-tailed bats, this rat species has had documented, adverse impacts to other colonial species of small bats, such as Townsend's big-eared bat (*Corynorhinus townsendii*) in California (Fellers 2000, pp. 524–525), and several species (*Mystacina* spp.) in New Zealand (Daniel and Williams 1984, p. 20). Based on observations of swiftlets, cave-nesting birds often share bats' roosting caves, where smooth rock overhangs in tall caverns provide nesting surfaces safe from rats, cats, and other predators (Tarburton 2011, p. 38). However, bats roosting in caves with low ledges or those that are filled with debris as a result of rockfalls or severe weather events are likely to either abandon such caves or become more accessible to predators such as rats. Rats have been postulated as a problem for the Mariana subspecies of the Pacific sheath-tailed bat (Wiles *et al.* 2011, p. 306); their remaining roost sites on Aguiguan appear to be those that are inaccessible to rodents (Wiles and Worthington 2002, p. 18; Berger *et al.* 2005, p. 144). Nonnative rats are present throughout the range of Pacific sheath-tailed bats (Atkinson and Atkinson 2000, p. 32), and although we lack information about the impact of rats on this species, based on information from other bat species, we consider rats to be predators of this species.

In summary, nonnative mammalian predators such as rats and feral cats are present throughout the range of the Pacific sheath-tailed bat. Predation of related subspecies and other cave-roosting bats by rats and feral cats strongly suggests a high probability of predation of the Pacific sheath-tailed bat. Based on the above information, we conclude that predation by rats and feral cats is a current and future threat to the Pacific sheath-tailed bat throughout its range.

Disease

Disease may contribute to the decline of the Pacific sheath-tailed bat, especially because of the bat's communal roosting (Wiles and Worthington 2002, p. 13). Microchiropterans have been severely affected by certain diseases, such as white nose syndrome in North America; therefore, the possibility exists that an undetected disease has led or contributed to the extirpation of this species on several islands (Malotaux 2012a in litt.). However, disease has not been observed either in the Mariana or South Pacific subspecies of Pacific sheath-tailed bat (Palmeirim *et al.* 2007, p. 517; Wiles *et al.* 2011, p. 306). The best available information does not indicate that disease is a threat to this species; therefore, we conclude that disease is not a current threat to the Pacific sheath-tailed bat or likely to become a threat in the future.

Conservation Efforts To Reduce Disease or Predation

We are unaware of any conservation actions planned or implemented at this time to abate the threats of predation by feral cats or rats to the Pacific sheath-tailed bat.

Summary of Factor C

In summary, based on the best available scientific and commercial information, we consider predation by nonnative mammals to be an ongoing threat to the Pacific sheath-tailed bat that will continue into the future. We do not find that disease is a threat to the Pacific sheath-tailed bat, or that it is likely to become one in the future.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Act requires that the Secretary assess available regulatory mechanisms in order to determine whether existing regulatory mechanisms may be inadequate as designed to address threats to the species being evaluated (Factor D). Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the potential threats to the Pacific sheath-tailed bat discussed under other factors. In determining whether the inadequacy of regulatory mechanisms constitutes a threat to the Pacific sheath-tailed bat, we analyzed the existing Federal, Territorial, and international laws and regulations that may address the threats to this species or contain relevant protective measures. Regulatory mechanisms, if they exist, may preclude the need for listing if we determine that such mechanisms adequately address the threats to the species such that listing is not warranted.

American Samoa

In American Samoa no existing Federal laws, treaties, or regulations specify protection of the Pacific sheath-tailed bat's foraging habitat from the threats of agriculture and development, protect its known roosting caves from disturbance, or address the threat of predation by nonnative mammals such as rats and feral cats. While some existing Territorial laws and regulations have the potential to afford the species some protection, their implementation does not achieve that result. The DMWR is given general statutory authority to "manage, protect, preserve, and perpetuate marine and wildlife resources" and to promulgate rules and regulations to this end (American Samoa Code Annotated (ASCA), title 24, chapter 3). This agency conducts monitoring surveys, conservation activities, and community outreach and education about conservation concerns. However, to our knowledge, DMWR has not used this authority to undertake conservation efforts for the Pacific sheath-tailed bat such as habitat protection and control of nonnative predators (DMWR 2006, pp. 79–80).

The Territorial Endangered Species Act provides for appointment of a Commission with the authority to nominate species as either endangered or threatened (ASCA, title 24, chapter 7). Regulations adopted under the Coastal Management Act (ASCA § 24.0501 *et seq.*) also prohibit the taking of threatened or endangered species listed as threatened or endangered by the American Samoa Government (ASG) (American Samoa Administrative Code (ASAC) § 26.0220.I.c). However, the ASG has not listed the bat as threatened or endangered, so these regulatory mechanisms do not provide protection for this species.

Commercial hunting and exportation of the Pacific sheath-tailed bat is prohibited under ASCA, title 24, chapter 23, "Conservation of Flying Foxes," which also authorizes and directs the ASG DMWR to monitor flying fox populations, protect roosting areas from disturbance, and conduct other activities to manage and protect the species. This law identifies the Pacific sheath-tailed bat as a "flying fox species" (ASCA § 24.2302), but it has not led to measures implemented to protect the Pacific sheath-tailed bat or its habitat from known threats. The sale and purchase of all native bats is prohibited, and the take, attempt to take, and hunting of all native bats are prohibited unless explicitly allowed during an officially proclaimed hunting season (ASAC § 24.1106); take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in such conduct (ASAC § 24.1101(f)). However, we do not consider hunting or other forms of utilization to be a threat to the Pacific sheath-tailed bat.

Under a 50-year lease agreement between local villages, the American Samoa Government, and the Federal Government, approximately 8,000 ac (3,240 ha) of forested habitat on the islands of Tutuila, Tau, and Ofu are protected and managed in the National Park of American Samoa (NPSA Lease Agreement 1993). There is the potential for development surrounding park in-holdings, but such forest clearing would be isolated and small in scale compared to the large tracts of forested areas protected. Although the lease agreement results in overall protection of the lands in the national park from development, this protection does not reduce or eliminate the range-wide threats to the Pacific sheath-tailed bat to the extent that listing is not warranted.

Under ASCA, title 24, chapter 06 (Quarantine), the director of the Department of Agriculture (DOA) has the authority to promulgate agriculture quarantine restrictions concerning animals. Using this authority, the DOA has restricted the importation of insects, farm animals, and "domestic pets," including exotic animals, to entry by permit only (See ASAC § 24.0305 *et seq.*). Yet these restrictions do not expressly extend to all non-domesticated animals, nor does the DMWR have any consultative role in restricting entry of animals (or plants) harmful to wildlife or native flora. Accordingly, existing statutes and regulations leave a great deal of discretion to the DOA, which may not block the entry of animals harmful to native species or their habitats (DMWR 2006, p. 80). These regulations do not require any measures to control nonnative animals, such as mammalian predators, that already are established and proving harmful to native species and their habitats.

The Territorial Coastal Management Act establishes a land use permit (LUP) system for development projects and a Project Notification Review System (PNRS) for multi-agency review and approval of LUP applications (ASAC § 26.0206). The standards and criteria for review of LUP applications include requirements to protect Special Management Areas (SMA), Unique Areas, and "critical habitats" where "sustaining the natural characteristics is important or essential to the productivity of plant and animal species, especially those that are threatened or endangered" on all lands and in coastal waters in the territory not under federal management authority (ASCA § 24.0501 *et seq.*). To date, three SMAs have been designated (Pago Pago Harbor, Leone Pala, and Nuuuli Pala; ASAC § 26.0221), and all are in coastal and mangrove habitats on the south shore of Tutuila that likely provide little foraging habitat and no roosting habitat for the Pacific sheath-tailed bat. The only Unique Area designated to date is the Ottoville Rainforest (American Samoa Coastal Management Program 2011, p. 52), also on Tutuila's south shore, which hypothetically may provide some foraging habitat for Pacific sheath-tailed bats, but it is a relatively small island of native forest in the middle of the heavily developed Tafuna Plain (Trail 1993, p. 4), far from the last known roost sites of this species. To the best of our knowledge, no critical habitats, as defined in the ASCA, have been designated.

Nonetheless, these laws and regulations are designed to ensure that "environmental concerns are given appropriate consideration," and include provisions and requirements that could address to some degree threats to native forests and other habitats important to the Pacific sheath-tailed bat, even though individual species are not named (ASAC § 26.0202 *et seq.*). Because the implementation of these regulations has been minimal, and because review of permits is not rigorous and does not reliably include the members of the PNRS Board responsible for management of wildlife and natural resources (ASCA § 26.026.C), issuance of permits has not provided the habitat protection necessary for the conservation of the species and there has been a continued loss of native habitat important to the Pacific sheath-tailed bat and other species as a result of land clearing for agriculture and development (DMWR 2006, p. 71). We conclude that the implementation of the Coastal Management Act and its PNRS does not address the threat of habitat destruction and degradation to the Pacific sheath-tailed bat.

In summary, some existing Territorial laws and regulatory mechanisms have the potential to offer some level of protection for the Pacific sheath-tailed bat and its habitat but are not currently implemented in a manner that would do so. The DMWR has not exercised its statutory authority to address threats, such as nonnative species, to the bat. The bat is not listed pursuant to the Territorial Endangered Species Act. The Coastal Management Act and its implementing regulations have the potential to address this threat more substantively, but are inadequately implemented. The lease agreements that establish the National Park of American Samoa do provide some protection of the bat's habitat from land-clearing for agriculture, but do not address other threats to the bat. Therefore, we conclude that regulatory mechanisms in American Samoa do not reduce or eliminate the threats to the Pacific sheath-tailed bat.

Samoa

In Samoa, the Animals Ordinance 1960 and the Protection of Wildlife Regulations 2004 regulate the protection, conservation, and utilization of terrestrial or land-dwelling species (MNRE and the Secretariat of the Pacific Regional Environment Programme (SPREP) 2012, p. 5). These laws and regulations prohibit, and establish penalties for committing, the following activities: (1) The taking, keeping, or killing of protected and partially protected animal species; (2) harm of flying species endemic to Samoa; and (3) the export of any bird from Samoa (MNRE and SPREP 2012, pp. 5–6). As described above, the Pacific sheath-tailed bat is neither endemic to the Samoan archipelago, nor is it listed as a "flying species endemic to Samoa" under the Protection of Wildlife Regulations 2004. Therefore, it is not protected by the current regulations.

The Planning and Urban Management Act 2004 (PUMA) and PUMA Environmental Impact Assessment (EIA) Regulation (2007) were enacted to ensure all development initiatives are properly evaluated for adverse environmental impacts (MNRE 2013, p. 93). The information required under PUMA for Sustainable Management Plans (Para. 18, Consultation) and Environmental Impact Assessments (Para. 46, Matters the Agency shall consider) does not include specific consideration for species or their habitat (PUMA 2004, as amended). Other similar approval frameworks mandated under other legislation address specific stressors and activities. These include the permit system under the Lands Surveys and Environment Act 1989 for sand mining and coastal reclamation, and ground water exploration and abstraction permits under the Water Resources Act 2008 (MNRE 2013, p. 93). The PUMA process has been gaining in acceptance and use; however, information is lacking on its effectiveness in preventing adverse impacts to species or their habitats (MNRE 2013, p. 93).

The Forestry Management Act 2011 aims to provide for the effective and sustainable management and utilization of forest resources. This law creates the requirement for a permit or license for commercial logging or harvesting of native, agro-forestry, or plantation forest resources (MNRE and SPREP 2012, p. 18). Permitted and licensed activities must follow approved Codes of Practice, forestry harvesting plans, and other requirements set by the Ministry of Natural Resources and Environment. Certain restrictions apply to actions on protected lands such as national parks and reserves. Permits or licenses may designate certain areas for the protection of the biodiversity, endangered species, implementation of international conventions, or water resources or area determined to be of significance on which no forestry activities may be undertaken (Forestry Management Act 2011, Para. 57). Although this law includes these general considerations for managing forest resources, it does not specifically provide protection to habitat for the Pacific sheath-tailed bat, and it does not appear to have been effective for that purpose.

Fiji

In Fiji, the Endangered and Protected Species Act (2002) regulates the international trade, domestic trade, possession, and transportation of species protected under CITES and other species identified as threatened or endangered under this act. Under the law, the Pacific sheath-tailed bat is recognized as an "indigenous species not listed under CITES." Its recognition under the law can garner public recognition of the importance of conserving the bat and its habitat (Tuiwawa 2015, in litt.); however, because the focus of the legislation is the regulation of foreign and domestic trade, and the bat is not a species in trade, this law is not intended to provide protection for the bat or its habitat within Fiji. The best available information does not identify any laws or regulations protecting the habitat of the Pacific sheath-tailed bat in Fiji.

Tonga

In Tonga, the Birds and Fish Preservation (Amendment) Act 1989 is a law to "make provision for the preservation of wild birds and fish." The law protects birds and fish, and provides for the establishment of protected areas, but it does not specifically protect the Pacific sheath-tailed bat or its habitat (Kingdom of Tonga 1988, 1989).

Vanuatu

In Vanuatu, the Environment Management and Conservation Act (2002) provides for conservation, sustainable development, and management of the environment of Vanuatu. Areas of the law that may apply to species protection are the Environmental Impact Assessment process, which includes an assessment of protected, rare, threatened, or endangered species or their habitats in project areas, laws on bioprospecting, and the creation of Community Conservation Areas for the management of unique genetic, cultural, geological, or biological resources (Environmental Management and Conservation Act, Part 3, Environmental Impact Assessment). Although the EMCA contains the regulatory provisions mentioned above, they do not sufficiently address the ongoing threats of deforestation, predation, and small population size for the Pacific sheath-tailed bat in Vanuatu. The Wild Bird Protection law (Republic of Vanuatu 2006) is limited to birds and does not offer protection to the Pacific sheath-tailed bat or its habitat.

Summary of Factor D

Based on the best available information, some existing regulatory mechanisms have the potential to offer protection, but their implementation does not reduce or remove threats to the Pacific sheath-tailed bat. In American Samoa the DMWR has not exercised its statutory authority to address threats to the bat such as predation by nonnative species, the bat is not listed pursuant to the Territorial Endangered Species Act, and the Coastal Management Act's land use permitting process is implemented inadequately to reduce or remove the threat of habitat destruction or modification to the Pacific sheath-tailed bat. In Samoa, laws and regulations that provide for species protection do not include the bat in lists of protected species, and laws and regulations governing environmental review of development projects do not include consideration of native species or their habitat. Forestry management laws provide for protection of native species and habitat through permitting and licensing processes but have not resulted in amelioration of habitat loss in Samoa. Fiji's endangered species law is focused on trade, and the Pacific sheath-tailed bat is not a species in trade and derives no conservation benefit from this law. Laws and regulations governing management of wildlife and native forest in Tonga and Vanuatu do not provide specific protections for the bat or its habitat, or have not resulted in conservation of habitat sufficient to preclude the need to list Pacific sheath-tailed bat. In sum, we conclude that existing regulatory mechanisms do not address the threats to the Pacific sheath-tailed bat.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Roost Disturbance

Disturbance of roosting caves has contributed to the decline of the Pacific sheath-tailed bat throughout its range. Disturbance of roost caves by humans is likely to have occurred as a result of recreation, harvesting of co-occurring bat species, and, more commonly, guano mining (Grant *et al.* 1994, p. 135; Tarburton 2002, p. 106; Wiles and Worthington 2002, p. 17; Palmeirim *et al.* 2005, pp. 63, 66; Malotaux 2012a in litt.; Malotaux 2012b in litt.). Roost disturbance is a well-known problem for many cave-dwelling species (Palmeirim *et al.* 2005, p. 3). Roosts are important sites for bats for mating, rearing young, and hibernating (in mid- and high-latitude species). Roosts often facilitate complex social interactions, offer protection from inclement weather, help bats conserve energy, and minimize some predation risk (Kunz and Lumsden 2003, p. 3); therefore, disturbance at caves and being repeatedly flushed from their roosts may cause bats to incur elevated energetic costs and other physiological stress and potentially increased risk of predation while in flight. Roost disturbance thus would negatively affect the survival and reproduction of the Pacific sheath-tailed bat.

In American Samoa, human disturbance at the two caves known to be historical roost sites for the bat is likely to be minimal. Guano mining occurred in the Anapeapea caves in the 1960s (Amerson *et al.* 1982, p. 74), but ceased due to the high salt content as a result of flooding with seawater during cyclones (Grant *et al.* 1994, p. 135). On Taveuni, Fiji, a cave known to be used as a roosting cave for the Pacific sheath-tailed bat is under more immediate threat by humans, as the cave is situated close to farmland, and is often used by locals (Malotaux 2012a, p. 3). On Upolu, Samoa, caves previously known to support bats are well-known and often visited by tourists; one within O le Pupu Pue National Park and others on village land (Tarburton 2011, pp. 40, 44). Swiftlets (*Aerodramus* spp.) are still observed in significant numbers in these caves (Tarburton 2011, p. 40), but these birds may be more tolerant than bats of human disturbance. We do not have information on human disturbance of roosts in Tonga or Vanuatu.

Goats are certain to enter caves for shelter from the sun and consequently can disturb roosting bats, although the extent of this disturbance is unknown (Scanlon 2015b, in litt.). Feral goats have been observed entering caves on Aguiguan Island for shelter, which disrupts colonies of the endangered swiftlet and is believed to disturb the Mariana subspecies of the Pacific sheath-tailed bat (Wiles and Worthington 2002, p. 17; Cruz *et al.* 2008, p. 243; Scanlon 2015b, in litt.). Researchers found that if caves that were otherwise suitable for bats were occupied by goats, there were no bats present in the caves (Guam Division of Aquatic and Wildlife Resources 1995, p. 95). On Yaqeta Island, Fiji, a cave once known to support several hundred Pacific sheath-tailed bats but now abandoned, is located within a small forest fragment frequented by goats (Scanlon *et al.* 2013, p. 453).

Populations of the Pacific sheath-tailed bat are concentrated in the caves where they roost, and chronic disturbance of these sites can result in the loss of populations, as described above. Because so few populations of this bat remain, loss of additional populations to roost disturbance further erodes its diminished abundance and distribution. Based on the above information, roost disturbance at caves accessible to humans and animals such as feral goats is a current threat and will likely continue to be a threat into the future.

Pesticides

The use of pesticides may negatively affect the Pacific sheath-tailed bat as a result of direct toxicity and a reduction in the availability of insect prey. Pesticides are known to adversely affect bat populations, either by secondary poisoning when bats consume contaminated insects or by reducing the availability of insect prey (Hutson *et al.* 2001, p. 138; Mickleburgh *et al.* 2002, p. 19). Pesticides may have contributed to declines and loss of the Mariana subspecies of Pacific sheath-tailed bat on islands where pesticides were once applied in great quantities (Guam, Saipan, and Tinian) (Wiles and Worthington 2002, p. 17).

In American Samoa and Samoa, current levels of pesticide use are likely lower than several decades ago when their use, particularly during the years in which taro was grown on large scales for export (1975–1985), coincided with the decline of bats in both places and has been implicated as the cause (Tarburton 2002, p. 107). However, Grant *et al.* (1994, pp. 135–136) dismissed the role of insecticides in the decline of the bat in American Samoa based on the absence of a similar population crash in the insectivorous white-rumped swiftlet (*Aerodramus spodiopygius*) and the limited use of agricultural and mosquito-control pesticides. On the island of Taveuni in Fiji, where bat populations have persisted at low levels over the last 10 years (Palmeirim *et al.* 2005, p. 62, Malotaux 2012, in litt.), several locals reported that pesticide use was quite widespread, and their use may be similar on other Fijian islands (Malotaux 2012, in litt.). We do not have information about pesticide use in Tonga or Vanuatu. The best available information does not lead us to conclude that the use of pesticides is a current threat to the Pacific sheath-tailed bat or that it is likely to become one in the future.

Hurricanes

Although severe storms are a natural disturbance with which the Pacific sheath-tailed bat has coexisted for millennia, such storms exacerbate other threats to the species by adversely affecting habitat and food resources and pose a particular threat to its small and isolated remaining populations. American Samoa, Samoa, Fiji, Tonga, and Vanuatu are irregularly affected by hurricanes (Australian BOM and CSIRO 2011 Vol. 1, p. 41). Located in the Southern Hemisphere, these countries experience most hurricanes during the November to April wet season, with the maximum occurrence between January and March (Australian BOM and CSIRO 2011 Vol. 1, p. 47). In the 41-year period ending in 2010, more than 280 hurricanes passed within 250 mi (400 km) of Samoa (52 storms), Tonga (71), Fiji (70), and Vanuatu (94) (Australian BOM and CSIRO 2011, pp. 76, 186, 216, 244). In recent decades, several major (named) storms have hit American Samoa and Samoa (Tusi in 1987, Ofa in 1990, Val in 1991, Heta in 2004, and Olaf in 2005 (MNRE 2013, pp. 31–32; Federal Emergency Management Agency 2015, in litt.)); Tonga (Waka in 2001 and Ian in 2014 (Tonga Meteorological Service 2006, in litt.; World Bank 2014, in litt.)); Fiji (Tomas in 2010 (Digital Journal 2010, in litt.)); and, most recently, Vanuatu (Pam in 2015 (BBC 2015, in litt.)).

The high winds, waves, strong storm surges, high rainfall, and flooding associated with hurricanes, particularly severe hurricanes (with sustained winds of at least 150 mi per hour or 65 m per second) cause direct mortality of the Pacific sheath-tailed bat. Cyclones Ofa (1990) and Val (1991) removed the dense vegetation that had obscured the entrance to the larger cave at Anapeapea Cove, inundated the cave with water, filled it with coral and fallen trees, and washed the cave walls clean (Craig *et al.* 1993, p. 52; Grant *et al.* 1994, p. 135). The majority of sheath-tailed bats in the cave likely were killed when the hurricane hit (Grant *et al.* 1994, p. 135).

Hurricanes also cause direct mortality of the Pacific sheath-tailed bat as a result of the bats' inability to forage during extended periods of high wind or rain, during which they may starve. Cyclone Val (December 1991) remained stationary over the Samoan archipelago for 4 days, and Pacific sheath-tailed bats likely were unable to feed during this time (Grant *et al.* 1994, p. 135). Despite the ability of Pacific sheath-tailed bats to enter torpor to survive episodes of inclement weather, the high ambient temperatures in Samoa may preclude the energy savings necessary to sustain a small (4–7-g) torpid bat for an extended period (Grant *et al.* 1994, p. 135).

Hurricanes may also cause modification of the roosting habitat of the Pacific sheath-tailed bat by modifying vegetation in and around cave entrances and altering climate conditions within roosting caves as a result. Microchiropterans, such as the Pacific sheath-tailed bat, can spend over half their lives in their roosts; consequently, the microclimate of these habitats can exert a strong influence over their heat-energy balance (Campbell *et al.* 2011, p. 174). The presence of nearby forest cover and a well-developed tree canopy at cave entrances is likely to be important in maintaining temperature and relative humidity, and minimizing air movement in bat roosts, while allowing for passage. O'Shea and Valdez (2009, pp. 77–78) characterized the limestone cave ecosystem of the Mariana subspecies on Aguiguan as having constant temperature, high relative humidity, and no major air movement. Although such data are lacking for the Pacific sheath-tailed bat, alteration of climate conditions has been implicated in the abandonment of roost caves by other bat species (Hutson *et al.* 2001, p. 101).

Loss of forest cover and associated insect prey for bats as a result of hurricanes can reduce foraging opportunities. Following Cyclones Ofa (1990) and Val (1991), about 90 percent of the forests on Upolu and Savaii were blown over or defoliated (Park *et al.* 1992, p. 4; Elmqvist *et al.* 2002, pp. 385, 388). Tarburton (2002, p. 107) noted that the abundance of flying insects remained low for weeks after cyclones had defoliated trees. Although the Pacific sheath-tailed bat has the capacity to forage in a variety of habitats, a study of habitat use by the Mariana subspecies showed a clear preference for forested habitats (Esselstyn *et al.* 2004, p. 307). Finally, the Pacific sheath-tailed bat's severely diminished abundance and distribution increase the likelihood that mortality events will cause population-level impacts and increase the vulnerability of populations and of the species to environmental catastrophes. Based on the information described above, we consider hurricanes to be a factor that exacerbates other threats to the Pacific sheath-tailed bat.

Low Numbers of Individuals and Populations

The low numbers of individuals and populations of this subspecies place the Pacific sheath-tailed bat at great risk of extinction from inbreeding and stochastic events such as storms. The threat is significant for cave-dwelling species whose populations are often highly localized with few numbers of animals that can easily be lost in a severe storm, disease outbreak, or disturbance to the roost caves (Wiles and Worthington 2002, p. 20).

Species that undergo significant habitat loss and degradation and face other threats resulting in decline in numbers and range reduction are inherently highly vulnerable to extinction resulting from localized catastrophes such as severe storms or disease outbreaks, climate change effects, and demographic stochasticity (Shaffer 1981, p. 131; Gilpin and Soulé 1986, pp. 24–34; Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). Conditions leading to this level of vulnerability are easily reached by island species that face numerous threats such as those described above. Small populations persisting in fragmented habitat face increased risk from environmental catastrophes, such as hurricanes, which could immediately extinguish some or all of the remaining populations; demographic stochasticity that could leave the species without sufficient males or females to be viable; or inbreeding depression or loss of adaptive potential that can be associated with loss of genetic diversity and result in eventual extinction (Shaffer 1981, p. 131; Lacy 2000, pp. 40, 44–46). The problems associated with small population size and vulnerability to natural catastrophes or random demographic or genetic fluctuations are further magnified by synergistic interactions with ongoing threats such as those discussed above under Factors A and C (Lacy 2000, pp. 45–47).

Breakdown of the Metapopulation Equilibrium

The Pacific sheath-tailed bat is thought to have a metapopulation structure (Palmeirim *et al.* 2005, p. 29), and will only persist in an archipelago if the island colonization rate is sufficiently high to compensate for the rate of extirpation caused by stochastic factors on individual islands (Palmeirim *et al.* 2005, p. 36). However, the colonization rate is obviously proportional to the availability of source populations; immigration of bats to recolonize sites or islands where the species was extirpated is dependent on sufficient numbers of animals existing in multiple other sites or islands within dispersal distance (Hanski and Gilpin 1991, pp. 4–14). Consequently, the extirpation of the Pacific sheath-tailed bat from some islands, particularly from the largest islands, may in the long term result in the permanent regional extinction of the species, even if suitable environmental conditions persist on some islands (Palmeirim *et al.* 2005, p. 36). For example, the continued decline of the only significant source population of Pacific sheath-tailed bat in the Fijian archipelago greatly diminishes the probability of recolonization and persistence throughout the remainder of its range in Fiji, where it is currently considered to be extirpated or nearly extirpated. The loss of a functioning metapopulation is a current threat and will continue to be a threat in the future.

Effects of Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. Currently, there are no climate change studies that address impacts to the specific habitat of the Pacific sheath-tailed bat. There are, however, climate change studies that address potential changes in the tropical Pacific on a broader scale. In our analyses, we reference the scientific assessment and climate change predictions for the western Pacific region prepared by the Pacific Climate Change Science Program (PCCSP), a collaborative research partnership between the Australian Government and 14 Pacific Island countries, including Samoa, Tonga, Fiji, and Vanuatu (Australian BOM and CSIRO 2011 Vol. 1, p. 15). The assessment builds on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), and presents regional predictions for the area roughly between 25° S. to 20° N. and 120° E. to 150° W. (excluding the Australian region south of 10° S. and west of 155° E.) (Australian BOM and CSIRO 2011 Vol. 1, pp. 14, 20). The findings for Samoa (13° S. and 171° E) may be used as a proxy for American Samoa (14 °S. and 170° W.).

The annual average air temperatures and sea surface temperatures are projected to increase in American Samoa, Samoa, Fiji, Tonga, and Vanuatu, as well as throughout the western Pacific region (Australian BOM and CSIRO 2011 Vol. 2, pp. 91, 198, 228, 258). The projected regional warming is around 0.5–1.0 °C by 2030, regardless of the emissions scenario. By 2055, the warming is generally 1.0–1.5 °C with regional differences depending on the emissions scenario. Projected changes associated with increases in temperature include, but are not limited to, changes in mean precipitation with unpredictable effects on local environments (including ecosystem processes such as nutrient cycling), increased occurrence of drought cycles, increases in the intensity and number of severe storms, sea-level rise, a shift in vegetation zones upslope, and shifts in the ranges and lifecycles of individual species (Loope and Giambelluca 1998, pp. 514–515; Pounds *et al.* 1999, pp. 611–612; IPCC AR4 2007, p. 48; Emanuel *et al.* 2008, p. 365; U.S. Global Change Research Program (US–GCRP) 2009, pp. 145–149, 153; Keener *et al.* 2010, pp. 25–28; Sturrock *et al.* 2011, p. 144; Townsend *et al.* 2011, pp. 14–15; Warren 2011, pp. 221–226; Finucane *et al.* 2012, pp. 23–26; Keener *et al.* 2012, pp. 47–51).

In the western Pacific region, increased ambient temperatures are projected to lead to increases in annual mean rainfall, the number of heavy rain days (20–50 mm), and extreme rainfall events in American Samoa, Samoa Fiji, Tonga, and Vanuatu (Australian BOM and CSIRO 2011 Vol. 1, p. 178; Australian BOM and CSIRO 2011 Vol. 2, pp. 87–88, 194–195, 224–225, 254–255). Impacts of increased precipitation on the Pacific sheath-tailed bat are unknown.

Hurricanes are projected to decrease in frequency in this part of the Pacific but increase in severity as a result of global warming (Australian BOM and CSIRO 2011 Vol. 2, pp. 88, 195, 225, 255). The high winds, waves, strong storm surges, high rainfall, and flooding associated with hurricanes, particularly severe hurricanes (with sustained winds of 150 mi (240 km) per hour), have periodically caused great damage to roosting habitat of Pacific sheath-tailed bats and to native forests that provide their foraging habitat (Craig *et al.* 1993, p. 52; Grant *et al.* 1994, p. 135; Tarburton 2002, pp. 105–108; Palmeirim *et al.* 2005, p. 35), as described in the "Hurricanes" section, above.

In the western Pacific region, sea level is projected to rise 1.18 to 6.3 in (30 to 160 mm) by 2030, 2.6 to 12.2 in (70 to 310 mm) by 2055, and 8.3 in to 2 ft (210 to 620 mm) by 2090 under the high-emissions scenario (Australian BOM and CSIRO 2011 Vol. 2, pp. 91, 198, 228, 258). The Pacific sheath-tailed bat is known to roost in areas close to the coast and forage in the adjacent forested areas at or near sea-level, as well as inland and at elevations up to 2,500 ft (762 m). The impacts of projected sea-level rise on low-elevation and coastal roosting and foraging habitat are likely to reduce and fragment the bat's habitat on individual high islands.

In summary, although we lack information about the specific effects of projected climate change on the Pacific sheath-tailed bat, we anticipate that increased ambient temperature, precipitation, hurricane intensity, and sea-level rise and inundation would create additional stresses on the bat and on its roosting and foraging habitat because it is vulnerable to these disturbances. The risk of extinction as a result of the effects of climate change increases when a species' range and habitat requirements are restricted, its habitat decreases, and its numbers and number of populations decline (IPCC 2007, pp. 8–11). In addition, the fragmented range, diminished number of populations, and low total number of individuals have caused the Pacific sheath-tailed bat to lose redundancy and resilience rangewide. Therefore, we would expect the Pacific sheath-tailed bat to be particularly vulnerable to the habitat impacts of projected environmental effects of climate change (Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Giambelluca and Luke 2007, pp. 13–15). Although we cannot predict the timing, extent, or magnitude of specific impacts, we do expect the effects of climate change to exacerbate the current threats to these species, such as habitat loss and degradation.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats to the Pacific sheath-tailed bat from roost disturbance, low numbers, hurricanes, climate change effects, or breakdown of the metapopulation equilibrium.

Summary of Factor E

In summary, based on the best scientific and commercial information available, we consider other natural and manmade factors to be current and ongoing threats to the Pacific sheath-tailed bat. Roost disturbance, small population size, and breakdown of the metapopulation dynamic are threats to the Pacific sheath-tailed bat and are likely to continue in the future. The bat's small and isolated remaining populations are vulnerable to natural environmental catastrophes such as hurricanes, and the threats of small population size and hurricanes are likely to continue into the future. Due to reduced levels of pesticide use and the uncertainty regarding impacts to this species, we do not consider the use of pesticides to be a threat to the Pacific sheath-tailed bat. We expect this species and its habitat to be particularly vulnerable to the environmental effects of climate change. Even though the specific and cumulative effects of climate change on the sheath-tailed bat are presently unknown and we are not able to determine with confidence the future magnitude of this threat, we anticipate that climate change will continue to exacerbate other threats to this species.

Synergistic Effects

In our analysis of the five factors, we found that the Pacific sheath-tailed bat is likely to be affected by loss of forest habitat, predation by nonnative mammals, roost disturbance, loss of range-wide metapopulation dynamics, and small population size. We also identify several potential sources of risk to the species (*e.g.,* disease, pesticides) that we do not consider to have a current, significant effect on the Pacific sheath-tailed bat because of their low occurrence today or apparently minimal overall impact on the species. Multiple stressors acting in combination have greater potential to affect the Pacific sheath-tailed bat than each factor alone. For example, projected warmer temperatures and increased storm severity resulting from climate change may enhance the spread of nonnative invasive plants in the bat's forest habitat, and increased ambient temperature and storm severity resulting from climate change are likely to exacerbate other, direct threats to the species; these effects of climate change are projected to increase in the future. The combined effects of environmental, demographic, and catastrophic-event stressors, especially on a small population, can lead to a decline that is unrecoverable and results in extinction (Brook *et al.* 2008, pp. 457–458). The impacts of the stressors described above, which might be sustained by a larger, more resilient population, have the potential in combination to rapidly affect the size, growth rate, and genetic integrity of a species that persists as small, disjunct populations. Thus, factors that, by themselves, may not have a significant effect on the Pacific sheath-tailed bat, may affect the subspecies when considered in combination.

Determination for the Pacific Sheath-Tailed Bat

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Pacific sheath-tailed bat. We find that the Pacific sheath-tailed bat is presently in danger of extinction throughout its entire range based on the severity and immediacy of the ongoing threats described above. Habitat loss and degradation due to deforestation (throughout the entire range) and overgrazing by goats (Fiji), predation by nonnative mammals, human disturbance of roost caves, and stochastic events such as hurricanes, floods, or disease outbreaks, which all pose a particular threat to the small and isolated remaining populations and probable low total abundance throughout its range, render the Pacific sheath-tailed bat in its entirety highly susceptible to extinction as a consequence of these imminent threats. The vulnerability of the species and its cave habitat to the impacts of predation and human disturbance is exacerbated by hurricanes and likely to be further exacerbated in the future by the effects of climate change, such as sea level rise, extreme rain events, and increased storm severity. The breakdown of the Pacific sheath-tailed bat's metapopulation structure is expected to reduce opportunities for repopulation following local extirpations of dwindling populations due to stochastic events. In addition, the continued decline of the last relatively large population of this species in Fiji further diminishes the probability of persistence throughout the remainder of its range where it is currently considered to be extirpated or nearly extirpated.

In summary, habitat destruction and modification from deforestation is a threat to the Pacific sheath-tailed bat that is occurring throughout its range (Factor A). The threat of predation by nonnative predators such as rats and feral cats is ongoing (Factor C). Human disturbance of roost caves, low numbers of individuals and populations and their concomitant vulnerability to catastrophic events such as hurricanes, and the breakdown of the metapopulation structure all are current threats to the bat as well (Factor E). All of these factors pose threats to the Pacific sheath-tailed bat, whether we consider their effects individually or cumulatively. Existing regulatory mechanisms and conservation efforts do not address the threats to the Pacific sheath-tailed bat (Factor D), and all of these threats will continue in the future.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Based on the severity and immediacy of threats currently affecting the species, we find that the Pacific sheath-tailed bat is presently in danger of extinction throughout its entire range. The imminent threats of habitat loss and degradation, predation by nonnative rats and cats, the small and declining number of individuals and populations, the effects of small population size, and stochastic events such as hurricanes render this species in its entirety highly susceptible to extinction; for this reason, we find that threatened species status is not appropriate for the Pacific sheath-tailed bat.

Therefore, on the basis of the best available scientific and commercial information, we are listing the Pacific sheath-tailed bat as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Because we have determined that the Pacific sheath-tailed bat is endangered throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577, July 1, 2014).

Mao, *Gymnomyza samoensis*

The genus *Gymnomyza* refers to birds in the honeyeater family Meliphagidae, which are restricted to a few islands in the southwestern Pacific Ocean. The mao (*Gymnomyza samoensis*), also called maomao, is one of three honeyeater species in the genus (Mayr 1945, p. 100). We have carefully reviewed the available taxonomic information (Watling 2001, p. 174; BirdLife International 2013; Gill and Donsker 2015; ITIS 2015a) and have concluded the species is a valid taxon.

The mao is a large honeyeater approximately 11 to 12 in (28 to 31 cm) long with dark plumage varying from blackish on the head and breast to olive-green on the wings, tail, and body (Stirnemann *et al.* 2015a, p. 1). It has an olive-green stripe under the eye. The bill is long, curved, and black in adults. Males have blue-grey and brown eyes, and females have brown eyes only (Stirnemann *et al.* 2015b, p. 383). Males are significantly larger than females with respect to wing, bill, tarsus, and tail length, although there is considerable overlap in size (Stirnemann et al. 2015, pp. 380–381 Wilson J.). Juveniles have a shorter bill than adults, and eye color changes 2 months post-fledging (Stirnemann et al. 2015, p. 383). The mao is a very vocal species and makes a variety of loud distinctive calls with bouts of calling lasting up to a minute (Watling 2001, p. 174). Calls differ between sexes (Stirnemann et al. 2015b, p. 382).

The mao is endemic to the Samoan archipelago. The species was thought to be primarily restricted to mature, well-developed, moist, mossy forests at upper elevations (Watling 2001, p. 175; Engbring and Ramsey 1989, p. 68), but has recently been observed at elevations ranging from 932 to 5,075 ft (284 to 1,547 m) and in ecosystems including lowland rainforest, disturbed secondary forest, and montane rainforest (MNRE 2006, pp. 9–10). The birds use the mid- to upper-canopy levels of the forest and will also forage along forest edges and brushy forest openings (Engbring and Ramsey 1989, p. 68). The mao has also been recorded visiting coconut trees near the coast (Watling 2001, p. 175).

Butler and Stirnemann (2013, p. 30) provide the following information about the mao's habitat use. The birds occur only in forested areas with a canopy layer, including modified habitat such as plantations where large trees also are present. They do not occur in logged areas with no large trees or canopy. Mao are primarily found in the high canopy layer, but also spend considerable time foraging on the trunks of trees and feeding on nectar sources near the ground (such as ginger (family Zingiberaceae)) and in low bushes (such as *Heliconia* spp.). The mao selects territories with high tree species diversity and with appropriate nectar sources and a large tree from which the male sings. Trees near a commonly used singing tree are selected for nesting. No particular tree species is used for nesting, but all nests are built more than 5 m (16 ft) above the ground.

Stirnemann *et al.* 2015a (pp. 4–7) provide the following information about mao life history and breeding behavior based on a study of 26 nesting attempts. The mao have an extended breeding season that can occur over 9 to 10 months, although peak egg-laying appears to occur from late May to October. One egg is produced per clutch. The nest consists of young branches of various trees and contains little lining (Butler and Stirnemann 2013, p. 25). Nests are oval, cup-shaped, approximately 5.5 in (14 cm) by 3.1 in (8 cm), and are constructed in the junction of branches. Incubation lasts 19 days, and chicks fledge 22 to 24 days after hatching. Juveniles are dependent on adults for approximately 8 to 10 weeks post-fledging. The female is almost exclusively responsible for incubation and feeding the chick, and both adults defend the nest. The mao will re-nest if the first nest fails, but not if the first nesting attempt produces a chick. Pairs are highly territorial with high site fidelity. The mao's extended breeding season, extended parental care period (100 to 120 days), and limited re-nesting attempts suggest a maximum annual reproductive capacity of one chick; notably low in comparison with other honeyeaters (Stirnemann *et al.* 2015a, p. 8).

The mao's diet consists primarily of nectar, and also includes some invertebrates and fruit (MNRE 2006, p. 11). Nectar is an especially important food source during the breeding season, and the mao will defend nectar patches (Butler and Stirnemann 2013, p. 30). The mao eats invertebrates by probing dead material and moss, and by gleaning from emerging leaves (Butler and Stirnemann 2013, p. 30). Females forage for invertebrates under dead leaves on the forest floor to feed their fledglings (Butler and Stirnemann 2013, p. 30). Fledglings solicit food from the female by begging continually from the forest floor (Butler and Stirnemann 2013, p. 28).

The mao was once found throughout Savaii and Upolu (Samoa) likely in forests ranging from the coast to mountain tops (MNRE 2006, p. 2). It is endemic to the islands of Savaii and Upolu, Samoa, and Tutuila Island, American Samoa (Engbring and Ramsey 1989, p. 68; Watling 2001, p. 174). The mao was observed during an 1839 expedition on Tutuila (Amerson *et al.* 1982, p. 72); two male specimens were collected there in 1924, and an unconfirmed observation of the mao on Tutuila was reported in 1977 (Engbring and Ramsey 1989, p. 68; Watling 2001, p. 174).

The mao is currently found only on the islands of Savaii and Upolu in Samoa (Amerson *et al.* 1982, p. 72; Engbring and Ramsey 1989, p. 68; Watling 2001, p. 74; MNRE 2006, p. 2). In 1984, the mao was reported as common in undisturbed upland forests (foothill, montane, and cloud forests above 1,970 ft (600 m)) of Upolu and Savaii (Bellingham and Davis 1988, p. 124). A decline in distribution was observed in the 1990s following a period in which several powerful hurricanes hit Samoa: Tusi (1987), Ofa (1990), and Val (1991) (Lovegrove 1992, p. 26; MNRE 2006, pp. 2, 4). Otherwise, no detailed surveys of the mao were conducted before 2005, and little information exists regarding changes in abundance and distribution (MNRE 2006, p. 2). Surveys conducted in 2005–2006 found mao at seven sites on Upolu and Savaii in upland forested habitat, yielded a rough estimate of 500 individuals and indicated that numbers are declining (MNRE 2006, p. 4; Tipamaa 2007, in litt., cited in Birdlife International 2012). The Rapid Biodiversity Assessment of Upland Savaii, Samoa, conducted in 2012, detected small numbers of the mao at two sites on the island (Atherton and Jefferies 2012, p. 14), and it is possible that the species has particular habitat requirements that have become limited in Samoa (MNRE 2013, p. 12). None of the recent surveys (Atherton and Jeffries 2012, p. 110; MNRE 2015, p. 87) or studies (Butler and Stirnemann 2013) has yielded an updated population estimate. However, researchers observed that the species is rarer than previously thought and recommended that comprehensive surveys be conducted to generate a new population estimate (Stirnemann 2015, in litt).

The mao is likely extirpated from Tutuila Island in American Samoa (Freifeld 1999, p. 1,208). Surveys conducted on Tutuila Island in 1982 and 1986 and from 1992 to 1996 did not detect the mao (Amerson *et al.* 1982, p. 72; Engbring and Ramsey 1989; p. 68; Freifeld 2015, in litt.). Given that the species is noisy and conspicuous, it is unlikely that a population on Tutuila was missed during the surveys (Engbring and Ramsey 1989; p. 68). More recent surveys conducted by DMWR in forested habitats likely to support mao failed to detect their presence, further indicating the likelihood that the species no longer occurs on Tutuila (MacDonald 2015 in litt.).

A general decline in distribution and numbers has resulted in small, increasingly fragmented populations estimated to comprise fewer than 1,000 mature individuals (MNRE 2006, p. 4; Tipamaa 2007, in litt., cited in Birdlife International 2012; Stirnemann 2015, in litt.). The mao is listed as Endangered in the 2014 IUCN Red List (Birdlife International 2012). Endangered is IUCN's second most severe category of extinction assessment, which equates to a very high risk of extinction in the wild. IUCN criteria include the rate of decline, population size, area of geographic distribution, and degree of population and distribution fragmentation; however, IUCN rankings do not confer any actual protection or management.

Summary of Factors Affecting the Mao

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat Destruction and Modification by Deforestation

Several thousand years of subsistence agriculture and more recent commercial agriculture has resulted in the alteration and great reduction in area of forests at lower elevations in the Samoan archipelago (Whistler 1994, p. 40; Mueller-Dombois and Fosberg 1998, p.

361; Whistler 2002, pp. 130–131). In American Samoa, forest clearing for agriculture has contributed to habitat loss and degradation of forests in the lowland areas on Tutuila, and has the potential to spread into higher elevations and previously undisturbed forest; however, owing to limits on the feasibility of land-clearing imposed by the island's extreme topography, large areas of mature native rainforest have persisted. Deforestation, therefore, is unlikely to have been a cause of the mao's extirpation on this island in American Samoa.

The loss of forested habitat in Samoa is a primary threat to the mao (MNRE 2006, p. 5). Between 1954 and 1990, the amount of forested area declined from 74 to 46 percent of total land area in Samoa (Food and Agricultural Organization (FAO) 2005 in litt.). Between 1978 and 1990, 20 percent of all forest losses in Samoa were attributable to logging, with 97 percent of the logging having occurred on Savaii (Government of Samoa 1998 in Whistler 2002, p. 132). Forested land area in Samoa continued to decline at a rate of roughly 2.1 percent or 7,400 ac (3,000 ha) annually from 1990 to 2000 (FAO 2005 in litt.). As a result, there is very little undisturbed, mature forest left in Samoa (Watling 2001, p. 175; FAO 2005 in litt.).

The clearing of land for commercial agriculture has been the leading cause of deforestation in Samoa—more so than plantations or logging (Whistler 2002, p. 131). The transition from subsistence agriculture to developing cash crops for export (*e.g.,* taro, bananas, cacao) coupled with rapid population growth and new technologies, led to increased forest clearing in Samoa (Paulson 1994, pp. 326–332; Whistler 2002, pp. 130–131). Today, only 360 ac (146 ha) of native lowland rainforests (below 2,000 ft or 600 m) remain on Savaii and Upolu as a result of logging, agricultural clearing, residential clearing (including relocation due to tsunami), and natural causes such as rising sea level and hurricanes (MNRE 2013, p. 47). On Upolu, direct or indirect human influence has caused extensive damage to native forest habitat above 2,000 ft (600 m) (MNRE 2013, p. 13). Although upland Upolu is forested, almost all of the upland forests are largely dominated by introduced species today (MNRE 2013, p. 12).

Savaii still has extensive upland forests that are for the most part undisturbed and composed of native species (MNRE 2013, p. 40). However, forest clearance remains an ongoing threat to the mao (MNRE 2006, p. 5). Logging is slowing down because the most accessible forest has largely been removed, but is an ongoing problem on Savaii despite years of effort to phase it out (MNRE 2006, p. 5; Atherton and Jeffries 2012, p. 17). Shifting or slash-and-burn cultivation is an increasing concern in upland forest that provides important refuges for the mao because farmers use forestry roads from heavily logged lowland forests to gain access to formerly inaccessible land (MNRE 2006, p. 5). For example, there is much concern about potential forest loss because of road that has been bulldozed into the cloud forest (above 3,280 ft (1,000 m)) on Savaii, apparently illegally (Atherton and Jeffries 2012, p. 16). Such roads provide vectors for invasive nonnative plant and animal species as well, thus exacerbating those threats to the mao and its habitat (Atherton and Jeffries 2012, p. 108).

Habitat quality has also degraded with the loss of closed forest space (MNRE 2006, p. 5; Butler and Stirnemann 2013, p. 22). An analysis in 1999 identified 32 percent of the total forest cover as "open" forest (less than 40 percent tree cover) and less than 0.05 percent as "closed" forest, largely as a result of damage from Cyclones Ofa and Val (Butler and Stirnemann 2013, p. 22). An additional 24 percent of the forest cover is classified as secondary re-growth forest. As a result, the montane forest in Samoa is now extremely open and patchy with fewer food resources for birds, including the mao (Butler and Stirnemann 2013, p. 22). The montane forests are also increasingly vulnerable to invasion by nonnative trees and other plants (Butler and Stirnemann 2013, p. 22), which adversely affect native forests through competition for light, nutrients, and water; chemical inhibition; and prevention of reproduction. Loss of forest is likely to affect the mao by reducing breeding, nesting, and foraging habitat, increasing forest fragmentation, and increasing the abundance and diversity of invasive species (Butler and Stirnemann 2013, p. 22).

On the island of Tutuila, American Samoa, agriculture and urban development covers approximately 24 percent of the island, and up to 60 percent of the island contains slopes of less than 30 percent where additional land clearing is feasible (ASCC 2010, p. 13; DWMR 2006, p. 25). Farmers are increasingly encroaching into some of the steep forested areas as a result of suitable flat lands already being occupied with urban development and agriculture (ASCC 2010, p. 13). Consequently, agricultural plots have spread from low elevations up to middle and some high elevations on Tutuila.

In summary, deforestation by land-clearing for agriculture has been the major contributing factor in the loss and degradation of forested habitat for the mao throughout its range in Samoa and American Samoa, and logging has been an additional major factor in loss and degradation of forest habitat in Samoa. The majority of the lowland forests have either been lost or fragmented by land-clearing for agriculture. Upland areas in Samoa have suffered extensive deforestation from logging and are increasingly at risk as agriculture and development expand into these areas. Based on the above information, we conclude that the threat of habitat destruction and modification by agriculture and development is a current threat to the mao and will continue into the future.

Habitat Destruction and Modification by Nonnative Plants

Nonnative plants are known to have invaded ecosystems in American Samoa and Samoa, with documented adverse impacts to native forests (Space and Flynn 2000, pp. 5, 12; Space and Flynn 2002, pp. 4–5; Whistler 2002, p. 122; Atkinson and Medeiros 2006, pp. 17–18; Craig 2009, pp. 94, 98; ASCC 2010, p. 22; NPSA 2012, in litt.; Atherton and Jeffries 2012, p. 103; Butler and Stirnemann 2013, p. 30; MNRE 2013, p. 29). The native flora of the Samoan archipelago (plant species that were present before humans arrived) consisted of approximately 550 taxa, 30 percent of which were endemic (species that occur only in the American Samoa and Samoa) (Whistler 2002, p. 8). An additional 250 plant species have been intentionally or accidentally introduced and have become naturalized, with 20 or more of these considered invasive or potentially invasive in American Samoa (Whistler 2002, p. 8; Space and Flynn 2000, pp. 23–24). Of these approximately 20 or more nonnative pest plant species, at least 10 have altered or have the potential to alter the habitat of the mao and the other 4 species proposed for listing (Atkinson and Medeiros 2006, p. 18; Craig 2009, pp. 94, 97–98; ASCC 2010, p. 15).

Nonnative plants can degrade native habitat in Pacific island environments by: (1) Modifying the availability of light through alterations of the canopy structure; (2) altering soil–water regimes; (3) modifying nutrient cycling; (4) ultimately converting native-dominated plant communities to nonnative plant communities; and (5) increasing the frequency of landslides and erosion (Smith 1985, pp. 217–218; Cuddihy and Stone, 1990, p. 74; Matson 1990, p. 245; D'Antonio and Vitousek

1992, p. 73; Vitousek *et al.* 1997, pp. 6–9; Atkinson and Medeiros 2006, p. 16). Nonnative plant species often exploit the disturbance caused by other factors such as hurricanes, agriculture and development, and feral ungulates, and thus, in combination reinforce or exacerbate their negative impacts to native habitats. Although the areas within the National Park of American Samoa (NPSA, on the islands of Tutuila, Ofu, and Tau) contain many areas that are relatively free of human disturbance and nonnative invasive species and that largely represent pre-contact vegetation, the threat of invasion and further spread by nonnative plant species poses immense cause for concern (Atkinson and Medeiros 2006, p. 17; ASCC 2010, p. 22).

The invasive vines *Merremia peltata* and *Mikania micrantha* have serious impacts in forested areas and prevent reforestation of former agriculture areas in Samoa and American Samoa; they are prolific invaders of forest gaps and disturbed sites and can have a smothering effect on growing trees, blocking sunlight to subcanopy and undergrowth vegetation (MNRE 2013, p. 29). Similarly, several invasive trees also negatively affect native forests in Samoa by outcompeting native species in forest gaps, getting established and moving further into old secondary regrowth and primary forests. A significant portion of Samoa's forest are now classified as secondary regrowth dominated by invasive tree species such as *Falcataria moluccana* (albizia, tamaligi), *Castilla elastica* (Mexican rubber tree, pulu mamoe), *Spathodea campanulata* (African tulip, faapasi), and *Funtumia elastica* (African rubber tree, pulu vao) (MNRE 2013, p. 29). In addition, the invasive shrub *Clidemia hirta* is found in remote areas of upland forests in Savaii (Atherton and Jeffries 2012, p. 103).

Although the mao forage and occasionally nest in modified habitat, such as plantation areas where nonnative trees that provide nectar and nesting habitat (*e.g., Falcataria moluccana*) may occur, these habitats lack the high tree-species diversity preferred by the mao and also place the species at a greater risk of predation by nonnative predators (see Factor C below) (Butler and Stirnemann 2013, p. 30). Please refer to the proposed rule (80 FR 61568; October 13, 2015) for descriptions of nonnative plant species that have the greatest negative impacts to the native forest habitat for the mao in American Samoa (Space and Flynn 2000, pp. 23–24; Craig 2009, pp. 94, 96–98; ASCC 2010, p. 15). In summary, while the best available information does not provide the exact distribution of nonnative plant species in the range of the mao, the habitat-modifying impacts of nonnative species are expected to continue and are not likely to be reduced in the future. Based on the above information, we conclude that the threat of habitat destruction and modification by nonnative plant species is a current threat to the mao and will continue into the future.

Habitat Destruction and Modification by Nonnative Ungulates

Feral pigs (*Sus scrofa*) cause multiple negative impacts to island ecosystems, including the destruction of vegetation, spread of invasive nonnative plant species, and increased soil erosion. In addition, feral cattle (*Bos taurus*) consume tree seedlings and browse saplings, and combined with undergrowth disturbance, prevent forest regeneration, subsequently opening the forest to invasion by nonnative species (Cuddihy 1984, p. 16).

Feral pigs are known to cause deleterious impacts to ecosystem processes and functions throughout their worldwide distribution (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 201; Campbell and Long 2009, p. 2,319). Feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. Pigs are a major vector for the establishment and spread of invasive, nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170, 196–197), which also serve to fertilize disturbed soil (Siemann *et al.* 2009, p. 547). In addition, pig rooting and wallowing contributes to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 18–19; Gagne and Cuddihy 1999, p. 52; Nogueira-Filho *et al.* 2009, p. 3,681; CNMI–SWARS 2010, p. 15; Dunkell *et al.* 2011, pp. 175–177; Kessler 2011, pp. 320, 323). Erosion resulting from rooting and trampling by pigs impacts native plant communities by contributing to watershed degradation and alteration of plant nutrient status, and increasing the likelihood of landslides (Vitousek *et al.* 2009, pp. 3,074–3,086; Chan-Halbrendt *et al.* 2010, p. 251; Kessler 2011, pp. 320–324). In the Hawaiian Islands, pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests, and are widely recognized as one of the greatest current threats to Hawaii's forest ecosystems (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195).

In American Samoa, feral pigs continue to negatively affect forested habitats. Feral pigs have been present in American Samoa since humans first settled the islands (American Samoa Historic Preservation Office 2015, in litt.). In the past, hunting pressure kept their numbers down, however, increasing urbanization and increasing availability of material goods has resulted in the decline in the practice of pig hunting to almost nothing (Whistler 1992, p. 21; 1994, p. 41). Feral pigs are moderately common to abundant in many forested areas, where they spread invasive plants, damage understory vegetation, and destroy riparian areas by their feeding and wallowing behavior (DMWR 2006, p. 23; ASCC 2010, p. 15). Feral pigs are a serious problem in the NPSA because of the damage they cause to native vegetation through their rooting and wallowing (Whistler 1992, p. 21; 1994, p. 41; Hoshide 1996, p. 2; Cowie and Cook 1999, p. 48; Togia pers. comm. in Loope *et al.* 2013, p. 321). Such damage to understory vegetation is likely to reduce foraging opportunities for the mao. Pig densities have been reduced in some areas by snaring and hunting, but remain high in other areas (ASCC 2010, p. 15).

In Samoa, feral pigs are present throughout lowland and upland areas on Savaii, and are considered to have a negative impact on the ecological integrity of upland forests of Savaii, an important conservation area for the mao and other rare species (Atherton and Jeffries 2012, p. 17). During recent surveys, feral pig activity was common at most sites in upland forests on Savaii, and was even detected at the upper range of the mao at an elevation of 4,921 ft (1,500 m) (Atherton and Jefferies 2012, pp. 103, 146).

Significant numbers of feral cattle were present in an upland site where their trampling had kept open grassy areas within forested flats, and where mao had previously been observed (Atherton and Jeffries 2012, pp. 103–105). Trampling in forested areas damages understory vegetation and is likely to reduce foraging opportunities for mao as well as provide vectors for invasion by nonnative plants. In summary, the widespread disturbance caused by feral ungulates is likely to continue to negatively impact the habitat of the mao. Based on the above information, we conclude that habitat destruction and modification by feral ungulates is a threat to the mao.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

American Samoa

The National Park of American Samoa (NPSA) was established to preserve and protect the tropical forest and archaeological and cultural resources, to maintain the habitat of flying foxes, to preserve the ecological balance of the Samoan tropical forest, and, consistent with the preservation of these resources, to provide for the enjoyment of the unique resources of the Samoan tropical forest by visitors from around the world (Pub. L. 100–571, Pub. L. 100–336). Under a 50-year lease agreement between local villages, the American Samoa Government, and the Federal Government, approximately 8,000 ac (3,240 ha) of forested habitat on the islands of Tutuila, Tau, and Ofu are protected and managed (NPSA Lease Agreement 1993).

Several programs and partnerships to address the threat of nonnative plant species have been established and are ongoing in American Samoa. Since 2000, the NPSA has implemented an invasive plant management program that has focused on monitoring and removal of nonnative plant threats. The nonnative plant species prioritized for removal include the following: *Adenanthera pavonina* or lopa, *Castilla elastica* or pulu mamoe, *Falcataria moluccana* or tamaligi, *Leucaena leucocephala* or lusina, and *Psidium cattleianum* or strawberry guava (Togia 2015, in litt.). In particular, efforts have been focused on the removal of the tamiligi from within the boundaries of the NPSA as well as in adjacent areas (Hughes *et al.* 2012).

The thrip *Liothrips urichi* is an insect that was introduced to American Samoa in the 1970s as a biocontrol for the weed *Clidemia hirta* (Tauiliili and Vargo 1993, p. 59). This thrip has been successful at controlling *Clidemia* on Tutuila. Though *Clidemia* is still common and widespread throughout Tutuila, thrips inhibit its growth and vigor, preventing it from achieving ecological dominance (Cook 2001, p. 143).

In 2004, the American Samoa Invasive Species Team (ASIST) was established as an interagency team of nine local government and Federal agencies. The mission of ASIST is to reduce the rate of invasion and impact of invasive species in American Samoa with the goals of promoting education and awareness on invasive species and preventing, controlling, and eradicating invasive species. In 2010, the U.S. Forest Service conducted an invasive plant management workshop for Territorial and Federal agencies, and local partners (Nagle 2010 in litt.). More recently, the NPSA produced a field guide of 15 invasive plants that the park and its partners target for early detection and response (NPSA 2012, in litt.).

In 1996, the NPSA initiated a feral pig control program that includes fencing and removal of pigs using snares in the Tutuila Island and Tau Island Units. Two fences have been constructed and several hundred pigs have been removed since 2007 (Togia 2015, in litt.). The program is ongoing and includes monitoring feral pig activity twice per year and additional removal actions as needed (Togia 2015, in litt.).

Samoa

In 2006, the Government of Samoa developed a recovery plan for the mao. The recovery plan identifies goals of securing the mao, maintaining its existing populations on Upolu and Savaii, and reestablishing populations at former sites (MNRE 2006). The plan has eight objectives: (1) Manage key forest areas on Upolu and Savaii where significant populations of the mao remain; (2) carry out detailed surveys to identify the numbers of pairs and establish monitoring; (3) increase understanding of the breeding and feeding ecology; (4) establish populations on rat-free islands or new mainland sites (including feasibility of reintroduction to American Samoa); (5) evaluate development of a captive-management program; (6) develop a public awareness and education program; (7) develop partnerships to assist in the mao recovery; and (8) establish a threatened bird recovery group to oversee the implementation and review of this plan and other priority bird species. These objectives have not all been met, and currently funding is not available to update the plan (Stirnemann in litt., 2016). In 2012, a detailed study provided information on the mao's diet, habitat use, reproductive success, and survival, which are important life-history requirements that can be used to implement recovery efforts (Butler and Stirnemann 2013).

The Mt. Vaea Ecological Restoration Project surveyed and mapped the presence of native bird and plant species and invasive plant species within lowland forest habitat of the 454-ac (183-ha) Mt. Vaea Scenic Reserve on Upolu, Samoa (Bonin 2008, pp. 2–5). The project was envisioned as the first demonstration project of invasive species management and forest restoration in Samoa. Phase I of the project resulted in the development of a restoration plan recommending removal of five priority invasive plant species and planting of native tree species (Bonin 2008, pp. viii, 24). Phase 2 of the project resulted in identifying techniques for treatment of two problematic rubber species (*Castilla elastica* or pulu mamoe and *Funtumia elastica* or pulu vao) and replanting areas with native tree species (Bonin 2010, pp. 20–21).

The Two Samoas Environmental Collaboration Initiative brings together government agencies, nongovernmental organizations, and institutions from American Samoa and Samoa and provides a platform for a single concerted effort to manage threats to environmental resources such as the management of fisheries, land-based sources of pollution, climate change, invasive species, and key or endangered species (MNRE 2014, p. 67). In 2010, a Memorandum of Understanding establishing the collaborative effort between the two countries was signed by the two agencies responsible for conservation of species and their habitats, MNRE (Samoa) and DMWR (American Samoa). This initiative establishes a framework for efforts to recover the mao in American Samoa and Samoa.

Summary of Factor A

In summary, based on the best available scientific and commercial information, we conclude that the destruction, modification, and curtailment of the mao's habitat and range are ongoing threats and these threats will continue into the future. The destruction and modification of habitat for the mao is caused by agriculture, logging, feral ungulates, and nonnative plant species, the impacts of all of which are exacerbated by hurricanes (see Factor E). The most serious threat identified has been the loss of forested habitat caused by forest clearing for agriculture, and logging. Although some protection of the mao's forest habitat in specific areas results from the efforts described above, none of these efforts reduces the threats of habitat loss to logging and conversion for agriculture (in Samoa) or habitat degradation by feral pigs, invasive, nonnative plants, and hurricanes (in Samoa and American Samoa) to the extent that listing is not warranted. All of these threats are ongoing and interact to exacerbate negative impacts and increase the vulnerability of extinction of the mao.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the analysis for our proposed rule, we had no information indicating that overutilization has led to the loss of populations or a significant reduction in numbers of mao. We have received no new information. When this final listing becomes effective (see **DATES**, above), research and collection of this species will be regulated through permits issued under section 10(a)(1)(A) of the Act.

Factor C: Disease or Predation

Nest predation by rats has negative impacts on many island birds, including the mao (Atkinson 1977, p. 129; 1985, pp. 55–70; Butler and Stirnemann 2013, p. 29; O'Donnell *et al.* 2015, pp. 24–26). Rats have been identified as the main cause of decline in the closely related *Gymnomyza aubryana* in New Caledonia (MNRE 2006, p. 8). Juveniles spending time on the forest floor are also at risk from predation by feral cats (Butler and Stirnemann 2013, p. 31). In American Samoa, because large areas of good-quality, closed-canopy forest habitat remain, factors in addition to deforestation are likely responsible for the extirpation of the mao from American Samoa, including predation by rats and cats. The mao's low reproductive rate (one juvenile per year) and extended breeding season also increase the likelihood of population-level effects of predation (Stirnemann *et al.* 2015a, p. 8). Other potential predators include the native barn owl (*Tyto alba*) and wattled honeyeater (*Foulehaio carunculatus*); however, adults can potentially drive these species away from the nest (Butler and Stirnemann 2013, p. 31).

Butler and Stirnemann (2013, p. 29) captured footage of one nest depredation event by a black rat, which took a mao egg. The rat gained access to the egg by jumping on the incubating female's back from the branch above, driving the female off the nest. Combined with the disappearance of two females during the breeding season, this footage suggests that adult females are potentially vulnerable to predation on the nest at night, while they are incubating (Butler and Stirnemann 2013, p. 31), a phenomenon documented or suspected in other island bird species, which lack innate behavioral defenses against nonnative mammalian predators (see for example Robertson *et al.* 1994, p. 1,084; Armstrong *et al.* 2006, p. 1,034; VanderWerf 2009, p. 741). This potential bias toward predation of females has the potential to create a skewed sex ratio in mao populations (Robertson *et al.* pp. 1,083–1,084).

The location of mao nests affects their vulnerability to predation by rats. Nests in close proximity to plantation habitats, where rats are most abundant, are particularly susceptible and experience low reproductive success (Butler and Stirnemann 2013, p. 31). Nests within 50 meters of a plantation are 40 percent more likely to be depredated than nests in forested areas farther from plantations (Butler and Stirnemann 2013, p. 31). Habitat loss from clearing of native forest combined with an expansion of plantations in Samoa may lead to an increase in rat populations (which find ample food in plantation habitats) and a potential for an increase in the mao nest predation rate.

Predation by feral cats has been directly responsible for the extinction of numerous birds on oceanic islands (Medina *et al.* 2011, p. 6). Native mammalian carnivores are absent from oceanic islands because of their low dispersal ability, but once introduced by humans, they become significant predators on native animals such as seabirds and landbirds that are not adapted to predation by terrestrial carnivores (Nogales *et al.* 2013, p. 804; Scott *et al.* 1986, p. 363; Ainley *et al.* 1997, p. 24; Hess and Banko 2006, in litt.). The considerable amount of time spent on the ground (up to 7 days) and poor flight ability of mao chicks post-fledging increases the risk of predation by feral cats (Butler and Stirnemann 2013, p. 28). Evidence of feral cat presence exists in montane forests and along an elevational gradient on Savaii (Atherton and Jeffries 2012, pp. 76, 103). Predation by feral cats has been posited as a contributing factor in the mao's extirpation from Tutuila (Stirnemann 2015, in litt.); however, feral cats have not commonly been observed in native forest areas on Tutuila (Arcilla 2016, in litt.). It should be noted that feral cats have been observed in remote and forested areas on Tau Island, should these areas be considered for mao recovery efforts (Badia 2014, in litt.; Arcilla 2016, in litt.). Based on the above information, we conclude that predation by rats and cats is a current threat to the mao that is likely to continue in the future.

Disease

Field and laboratory investigations suggest that avian malaria may be indigenous and non-pathogenic in American Samoa and, therefore, is unlikely to affect bird populations (Jarvi *et al.* 2003, p. 636; Seamon 2004a, in litt.). The best available information does not indicate there are other diseases affecting the mao populations in Samoa (MNRE 2006, p. 8).

Conservation Efforts To Reduce Disease or Predation

A project to restore habitat for the mao and other priority species by removing the threat of predation by the Polynesian rat (*R. exulans*) was attempted on the uninhabited islands of Nuutele (267 ac (108 ha)) and Nuulua (62 ac (25 ha)) off the eastern end of Upolu, Samoa (Tye 2012, in litt). The demonstration project aimed to eradicate the Polynesian rat from both islands through aerial delivery of baits. Post-project monitoring detected rats on Nuutele, suggesting that rats survived the initial eradication effort or were able to recolonize the island (Tye 2012, in litt.).

Summary of Factor C

In summary, based on the best available scientific and commercial information, we conclude that disease is not a current threat to the mao, nor is it likely to become a threat in the future. Because of its low reproductive rate (1 egg per clutch) and vulnerability to predation at multiple life-history stages (eggs, chicks, fledglings, and adults), we conclude that the threat of predation by rats and feral cats is an ongoing threat to the mao that will continue into the future.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

In determining whether the inadequacy of regulatory mechanisms constitutes a threat to the mao, we analyzed the existing Federal, Territorial, and international laws and regulations that may address the threats to this species or contain relevant protective measures.

Samoa

The Government of Samoa has enacted numerous laws and regulations and has signed on to various international agreements that address a wide range of activities such as land tenure and development, biodiversity, wildlife protection, forestry management, national parks, biosecurity, and the extraction of water resources (MNRE 2013, pp. 148–149; MNRE 2014, p. 57).

The Protection of Wildlife Regulations 2004 regulates the protection, conservation, and utilization of terrestrial or land-dwelling species (MNRE and SPREP 2012, p. 5). These regulations prohibit, and establish penalties for committing, the following activities: (1) The taking, keeping, or killing of protected and partially protected animal species; (2) harm of flying species endemic to Samoa; and (3) the export of any bird from Samoa (MNRE and SPREP 2012, pp. 5–6). The mao is endemic to the Samoan archipelago, but it is not listed as a "flying species endemic to Samoa" under these regulations.

The Planning and Urban Management Act 2004 (PUMA) and PUMA Environmental Impact Assessment (EIA) Regulation (2007) were enacted to ensure all development initiatives are properly evaluated for adverse environmental impacts (MNRE 2013, p. 93). The information required for Sustainable Management Plans and Environmental Impact Assessments does not include specific consideration for species or their habitat (Planning and Urban Management Act 2004, as amended). Other similar approval frameworks mandated under other legislation address specific threats and activities. These include the permit system under the Lands Surveys and Environment Act 1989 for sand mining and coastal reclamation, and ground water exploration and abstraction permits under the Water Resources Act 2008 (MNRE 2013, p. 93). The PUMA process has been gaining in acceptance and use; however, information on its effectiveness in preventing adverse impacts to species or their habitats is lacking (MNRE 2013, p. 93).

The Forestry Management Act 2011 regulates the effective and sustainable management and utilization of forest resources. This law creates the requirement for a permit or license for commercial logging or harvesting of native, agro-forestry, or plantation forest resources (MNRE and SPREP 2012, p. 18). Permitted and licensed activities must follow approved Codes of Practice, forestry harvesting plans, and other requirements set by the Ministry of Natural Resources and Environment. License or permit holders must also follow laws relating to national parks and reserves, and all provisions of management plans for any national park or reserve. Under this act, lands designated as protected areas for the purposes of the protection of biodiversity and endangered species prohibit any clearing for cultivation or removal of forest items from protected areas without prior consent of the MNRE (Forestry Management Act 2011, Para. 57). Although this law includes these general considerations for managing forest resources, and possibly provides some protection from forest removal in the mao's habitat, it does not address habitat degradation by nonnative invasive plants and feral ungulates, or the impacts of permitted logging roads or illegal roads, both of which create vectors into native forest for these nonnative species (Atherton and Jeffries 2012, pp. 14–15).

The Quarantine (Biosecurity) Act 2005 forms part of the system to combat the introduction of invasive species and manage existing invasions. It is the main legal instrument to manage the deliberate or accidental importation of invasive species, pests, and pathogens and also to deal with such species should they be found in Samoa (MNRE and SPREP 2012, p. 38). This legislation also provides a risk assessment procedure for imported animals, plants, and living modified organisms. Although this law provides for management of invasive species, including those that degrade or destroy native forest habitat for the mao, we do not have information indicating the degree to which it has been implemented or effectiveness of such efforts.

In Samoa, there are several regulatory and nonregulatory protected area systems currently in place that protect and manage terrestrial species and their habitats; these include national parks, nature reserves, conservation areas, and village agreements. The National Parks and Reserves Act (1974) created the statutory authority for the protection and management of national parks and nature reserves. Conservation areas, unlike national parks and nature reserves, emphasize the importance of conservation, but at the same time address the need for sustainable development activities within the conservation area. Village agreements are voluntary agreements or covenants developed and signed by local villages and conservation organizations that stipulate specific conservation measures or land use prohibitions in exchange for significant development aid. As of 2014, a total of approximately 58,176 ac (23,543 ha), roughly 8 percent of the total land area of Samoa (285,000 ha) were enlisted in terrestrial protected areas, with the majority located in five national parks covering a total of 50,629 ac (20,489 ha) overlapping several key conservation areas identified for the mao (MNRE 2006, p. 14; MNRE 2014, p. 57). Although the protected status of these lands affords some protection to the mao's forest habitat within these areas, it does not address range-wide threats such as predation by nonnative predators or habitat degradation by nonnative plants.

Conservation International (CI) and the Secretariat of the Pacific Regional Environment Programme (SPREP) in collaboration with the Ministry of Natural Resources Environment identified eight terrestrial Key Biodiversity Areas (KBAs) intended to ensure representative coverage of all native ecosystems with high biodiversity values, five of which are targeted to benefit the conservation of the mao (CI *et al.* 2010, p. 12): Eastern Upolu Craters, Uafato-Tiavea Coastal Forest, O le Pupu Pue National Park, Apia Catchments, and Central Savaii Rainforest. All five KBAs also overlap with Important Bird Areas designated by BirdLife International (Schuster 2010, pp. 16–43). Currently, these five KBAs, which are nonregulatory, are under various degrees of protection and conservation management, including national parks, Community Conservation Areas, and areas with no official protective status (CI *et al.* 2010, p. 12). Many of the KBAs and protected areas mentioned above are still faced with increasing pressures in large part due to difficulties of their location on customary lands (traditional village system) and the ongoing threats of development, invasive species, and logging (MNRE 2009, p. 1; CI *et al.* 2010, p. 12). The decline of closed forest habitat has been a result of logging on Savaii and agricultural clearing on the edges of National Parks and Reserves (MNRE 2006, p. 5).

In 2006, the Government of Samoa developed a 10-year recovery plan for the mao. The recovery plan identifies goals of securing the mao, maintaining its existing populations on Upolu and Savaii, and reestablishing populations at former sites (MNRE 2006). This plan is nonregulatory in nature, its goals have not been met, and as of this writing, resources are not available to update and renew the plan (Stirnemann 2016, in litt.).

In summary, existing regulatory mechanisms have the potential to address the threat of habitat destruction and degradation to the mao in Samoa, and provide some benefit to the species in this regard. However, these policies and legislation do not reduce or eliminate the threats to the mao in Samoa such that listing is not warranted.

American Samoa

In American Samoa no existing Federal laws, treaties, or regulations specify protection of the mao's habitat from the threat of deforestation, or address the threat of predation by nonnative mammals such as rats and feral cats. However, some existing Territorial laws and regulations have the potential to afford the species some protection, but their implementation does not achieve that result. The DMWR is given statutory authority to "manage, protect, preserve, and perpetuate marine and wildlife resources" and to promulgate rules and regulations to that end (ASCA, title 24, chapter 3). This agency conducts monitoring surveys, conservation activities, and community outreach and education about conservation concerns. However, to our knowledge, the DMWR has not used this authority to undertake conservation efforts for the mao such as habitat protection and control of nonnative predators such as rats and cats (DMWR 2006, pp. 79–80).

The Territorial Endangered Species Act provides for appointment of a Commission with the authority to nominate species as either endangered or threatened (ASCA, title 24, chapter 7). Regulations adopted under the Coastal Management Act (ASCA § 24.0501 *et seq.*) also prohibit the taking of threatened or endangered species (ASAC § 26.0220.I.c). However, the ASG has not listed the mao as threatened or endangered, so these regulatory mechanisms do not provide protection for this species.

Under ASCA, title 24, chapter 08 (Noxious Weeds), the Territorial DOA has the authority to ban, confiscate, and destroy species of plants harmful to the agricultural economy. Similarly, under ASCA, title 24, chapter 06 (Quarantine), the director of DOA has the authority to promulgate agriculture quarantine restrictions concerning animals. These laws may provide some protection against the introduction of new nonnative species that may have negative effects on the mao's habitat or become predators of the mao, but these regulations do not require any measures to control invasive nonnative plants or animals that already are established and proving harmful to native species and their habitats (DMWR 2006, p. 80) (see Factor D for the Pacific sheath-tailed bat, above).

As described above, the Territorial Coastal Management Act establishes a land use permit (LUP) system for development projects and a Project Notification Review System (PNRS) for multi-agency review and approval of LUP applications (ASAC § 26.0206). The standards and criteria for review of LUP applications include requirements to protect Special Management Areas (SMA), Unique Areas, and "critical habitats" (ASCA § 24.0501 *et. seq.*). To date, the SMAs that have been designated (Pago Pago Harbor, Leone Pala, and Nuuuli Pala; ASAC § 26.0221), do not provide habitat for the mao. The only Unique Area designated to date, the Ottoville Rainforest (American Samoa Coastal Management Program 2011, p. 52), hypothetically may provide some foraging habitat for the mao, but it is a small (20-ac (8-ha)) island of native forest in the middle of the heavily developed Tafuna Plain (Trail 1993, pp. 1, 4), far from large areas of native forest. These laws and regulations are designed to ensure that "environmental concerns are given appropriate consideration," and include provisions and requirements that could address to some degree threats to native forest habitat required by the mao, even though individual species are not named (ASAC § 26.0202 *et seq.*). Because the implementation of these regulations has been minimal and the review of permits is not rigorous, the permit system has not provided the habitat protection necessary to provide for the conservation of the mao, and loss of native forest habitat important to the mao and other species as a result of land-clearing for agriculture and development has continued (DMWR 2006, p. 71). We conclude that the implementation of the Coastal Management Act and its PNRS is inadequate to address the threat of habitat destruction and degradation to the mao (see Factor D for the Pacific sheath-tailed bat for further details).

In summary, existing Territorial laws and regulatory mechanisms have the potential to offer some level of protection for the mao and its habitat if it were to be reintroduced to American Samoa but are not currently implemented in a manner that would do so. The DMWR has not exercised its statutory authority to address threats to the mao such as predation by nonnative predators; the mao is not listed pursuant to the Territorial Endangered Species Act; and the Coastal Management Act and its implementing regulations have the potential to address the threat of habitat loss to deforestation more substantively, but the implementation of this law does not address the threats to the mao.

Summary of Factor D

Based on the best available information, no existing Federal regulatory mechanisms address the threats to the mao. Some existing regulatory mechanisms in Samoa and American Samoa have the potential to offer some protection of the mao and its habitat, but their implementation does not reduce or remove threats to the species such as habitat destruction or modification or predation by nonnative species such that listing is not warranted. For these reasons, we conclude that existing regulatory mechanisms do not address the threats to the mao.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Hurricanes

Hurricanes are a common natural disturbance in the tropical Pacific and have occurred in the Samoan archipelago with varying frequency and intensity (see Factor E discussion for the Pacific sheath-tailed bat). Catastrophic events such as hurricanes can be a major threat to the persistence of species already experiencing population-level impacts of other stressors (MNRE 2006, p. 8). Two storms in the 1990s, Cyclones Ofa (1990) and Val (1991), severely damaged much of the remaining forested habitat in Samoa, reducing forest canopy cover by 73 percent (MNRE 2006, pp. 5, 7). In addition, Cyclone Evan struck Samoa in 2012 causing severe and widespread forest damage, including defoliation and downed trees in 80 to 90 percent of the Reserves and National Parks on Upolu (Butler and Stirnemann 2013, p. 41). Secondary forests also were severely damaged by the storm, and most trees in the known mao locations were stripped of their leaves, fruits, and flowers (Butler and Stirnemann 2013, p. 41). Hurricanes thus exacerbate forest fragmentation and invasion of native forests by nonnative species, stressors that reduce breeding, nesting, and foraging habitat for the mao (see Factor A, above). Although severe storms are a natural disturbance with which the mao has coexisted for millennia, such storms exacerbate the threats to its remaining small, isolated populations by at least temporarily damaging or redistributing habitat and food resources for the birds and causing direct mortality of individuals (Wiley and Wunderle 1993, pp. 340–341; Wunderle and Wiley 1996, p. 261). If the mao was widely distributed, had ample habitat and sufficient numbers, and were not under chronic pressure from anthropogenic threats such as introduced predators, it might recover from hurricane-related mortality and the temporary loss or redistribution of resources in the wake of severe storms. However, this species' current status makes it highly vulnerable to catastrophic chance events, such as hurricanes, which occur frequently throughout its range in Samoa and American Samoa.

Low Numbers of Individuals and Populations

Species with low numbers of individuals, restricted distributions, and small, isolated populations are often more susceptible to extinction as a result of natural catastrophes such as hurricanes or disease outbreaks, demographic fluctuations, or inbreeding depression (Shaffer 1981, p. 131; see Factor E discussion for the Pacific sheath-tailed bat, above). These problems associated with small population size are further magnified by interactions with each other and with other threats, such as habitat loss and predation (Lacy 2000, pp. 45–47; see Factor A and Factor C, above).

We consider the mao to be vulnerable to extinction because of threats associated with its low number of individuals—perhaps not more than a few hundred birds—and low numbers of populations. These threats include environmental catastrophes, such as hurricanes, which could immediately extinguish some or all of the remaining populations; demographic stochasticity that could leave the species without sufficient males or females to be viable; and inbreeding depression or loss of adaptive potential that can be associated with loss of genetic diversity and result in eventual extinction (Shaffer 1981, p. 131; Lacy 2000, pp. 40, 44–46). Combined with ongoing habitat destruction and modification by logging, agriculture, development, nonnative plant species, and feral ungulates (Factor A) and predation by rats and feral cats (Factor C), the effects of these threats to small populations further increases the risk of extinction of the mao.

Effects of Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate (see Factor E discussion for the Pacific sheath-tailed bat). The magnitude and intensity of the impacts of global climate change and increasing temperatures on western tropical Pacific island ecosystems currently are unknown. In addition, there are no climate change studies that address impacts to the specific habitats of the mao. The scientific assessment completed by the Pacific Science Climate Science Program provides general projections or trends for predicted changes in climate and associated changes in ambient temperature, precipitation, hurricanes, and sea level rise for countries in the western tropical Pacific region including Samoa (used also as a proxy for American Samoa) (Australian BOM and CSIRO 2011, Vol. 1 & Vol. 2; see Factor E discussion for the Pacific sheath-tailed bat for summary).

Although we do not have specific information on the impacts of the effects of climate change to the mao, increased ambient temperature and precipitation, and increased severity of hurricanes, would likely exacerbate other threats to this species as well as provide additional stresses on its habitat. The probability of species extinction as a result of climate change impacts increases when its range is restricted, habitat decreases, and numbers of populations decline (IPCC 2007, p. 48). The mao is limited by its restricted range and low numbers of individuals. Therefore, we expect this species to be particularly vulnerable to the environmental effects of climate change and subsequent impacts to its habitat, even though the specific and cumulative effects of climate change on the mao are presently unknown and we are not able to determine the magnitude of this future threat with confidence. Although we cannot predict the timing, extent, or magnitude of specific impacts, we do expect the effects of climate change to exacerbate the current threats to these species, such as habitat loss and degradation.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats of hurricanes and low numbers of individuals or the effects of climate change that negatively impact the mao. However, the completion of a plan for the mao's recovery in Samoa in 2006, basic research on the species' life-history requirements, population monitoring, and cooperation between the Governments of American Samoa and Samoa may contribute to the conservation of the mao.

Synergistic Effects

In our analysis of the five factors, we found that the mao is likely to be affected by loss of forest habitat, predation by nonnative mammals, and the vulnerability of its small, isolated population to chance demographic and environmental occurrences. In addition, increased ambient temperature and storm severity resulting from climate change are likely to exacerbate other, direct threats to the mao and in particular place additional stress on its habitat; these effects of climate change are projected to increase in the future. Multiple stressors acting in combination have greater potential to affect the mao than each factor alone. For example, projected warmer temperatures and increased storm severity may enhance the spread of nonnative invasive plants in the mao's forest habitat. The combined effects of environmental, demographic, and catastrophic-event stressors, especially on a small population, can lead to a decline that is unrecoverable and results in extinction (Brook *et al.* 2008, pp. 457–458). The impacts of any one of the stressors described above might be sustained by a species with a larger, more resilient population, but in combination habitat loss, predation, small-population risks, and climate change have the potential to rapidly affect the size, growth rate, and genetic integrity of a species like the mao that persists as small, disjunct populations. Thus, the synergy among factors may result in greater impacts to the mao than any one stressor by itself.

Determination for the Mao

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to mao. This large honeyeater endemic to the Samoan archipelago is vulnerable to extinction because of the loss and degradation of its forested habitat, predation by nonnative mammals, and the impact of stochastic events to species that are reduced to small population size and limited distribution.

The threat of habitat destruction and modification from agriculture, logging, and development, nonnative plants, and nonnative ungulates is occurring throughout the range of the mao, and is not likely to be reduced in the future (Factor A). The threat of predation from nonnative predators such as rats and feral cats is ongoing and likely to continue in the future (Factor C). Additionally, the low numbers of individuals and populations of the mao render the species vulnerable to environmental catastrophes such as hurricanes, demographic stochasticity, and inbreeding depression (Factor E). These factors pose threats to the mao whether we consider their effects individually or cumulatively. Existing regulatory mechanisms and conservation efforts do not address the threats to this species (Factor D), and all of these threats are likely to continue in the future.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Based on the severity and immediacy of threats currently affecting the species, we find that the mao is presently in danger of extinction throughout its entire range. The imminent threats of habitat loss and degradation, predation by nonnative rats and feral cats, the small number of individuals, the effects of small population size, restricted range, and stochastic events such as hurricanes render this species in its entirety highly susceptible to extinction; for this reason, we find that threatened species status is not appropriate for the mao. Therefore, on the basis of the best available scientific and commercial information, we are listing the mao as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Because we have determined that the mao is endangered throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577, July 1, 2014).

American Samoa Population of the Friendly Ground-Dove, *Gallicolumba stairi*, Tuaimeo (American Samoa, Samoa)

The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia and is represented in the oceanic Pacific by six species. Three species are endemic to Micronesian islands or archipelagos, two are endemic to island groups in French Polynesia, and *Gallicolumba stairi* is endemic to Samoa, Tonga, and Fiji (Sibley and Monroe 1990, p. 206). The species name used here, the friendly ground-dove, was derived from "Friendly Islands" (*i.e.*, Tonga), where it is purported to have been first collected (Watling 2001, p. 118). Because of its shy and secretive habits, this species is also often referred to as the shy ground-dove (Pratt *et al.* 1997, pp. 194–195). Some authors recognize two subspecies of the friendly ground-dove: One, slightly smaller, in the Samoan archipelago (*G. s. stairi*), and the other in Tonga and Fiji (*G. s. vitiensis*) (Mayr 1945, pp. 131–132). However, morphological differences between the two are slight (Watling 2001, p. 117), and no genetic or other studies have validated the existence of separate subspecies.

The friendly ground-dove is a medium-sized dove, approximately 10 in (26 cm) long. Males have rufous-brown upperparts with a bronze-green iridescence, the crown and nape are grey, the wings rufous with a purplish luster, and the tail is dark brown. The abdomen and belly are dark brown-olive, while the breast shield is dark pink with a white border. Immature birds are similar to adults but are uniformly brown. Females are dimorphic in Fiji and Tonga, where a brown phase (tawny underparts and no breast shield) and pale phase (similar to males but duller) occur. In Samoa and American Samoa, only the pale phase is known to occur (Watling 2001, p. 117).

In American Samoa, the friendly ground-dove is typically found on or near steep, forested slopes, particularly those with an open understory and fine scree or exposed soil (Tulafono 2006, in litt.). Elsewhere the species is known to inhabit brushy vegetation or native forest on offshore islands, native limestone forest (Tonga), and forest habitats on large, high islands (Steadman and Freifeld 1998, p. 617; Clunie 1999, pp. 42–43; Freifeld *et al.* 2001, p. 79; Watling 2001, p. 118). This bird spends most of its time on the ground, and feeds on seeds, fruit, buds, snails, and insects (Clunie 1999, p. 42; Craig 2009, p. 125). The friendly ground-dove typically builds a nest of twigs several feet from the ground or in a tree fern crown, and lays one or two white eggs (Clunie 1999, p. 43). Nesting was also observed in a log less than a meter off the ground (Stirnemann 2015, in litt.).

The friendly ground-dove is uncommon or rare throughout its range in Fiji, Tonga, Wallis and Futuna, Samoa, and American Samoa (Steadman and Freifeld 1998, p. 626; Schuster *et al.* 1999, pp. 13, 70; Freifeld *et al.* 2001, pp. 78–79; Watling 2001, p. 118; Steadman 1997, pp. 745, 747), except for on some small islands in Fiji (Watling 2001, p. 118). The status of the species as a whole is not monitored closely throughout its range, but based on available information, the friendly ground-dove persists in very small numbers in Samoa (Schuster *et al.* 1999, pp. 13, 70; Freifeld *et al.* 2001, pp. 78–79), and is considered to be among the most endangered of native Samoan bird species (Watling 2001, p. 118). In Tonga, the species occurs primarily on small, uninhabited islands and in one small area of a larger island (Steadman and Freifeld 1998, pp. 617–618; Watling 2001, p. 118). In Fiji, the friendly ground-dove is thought to be widely distributed but uncommon on large islands and relatively common on some small islands (Watling 2001, p. 118).

In American Samoa, the species was first reported on Ofu in 1976 (Amerson *et al.* 1982, p. 69), and has been recorded infrequently on Ofu and more commonly on Olosega since the mid-1990s (Amerson *et al.* 1982, p. 69; Seamon 2004a, in litt.; Tulafono 2006, in litt.). Amerson *et al.* (1982, p. 69) estimate a total population of about 100 birds on Ofu and possibly Olosega. Engbring and Ramsey (1989, p. 57) described the population on Ofu as "very small," but did not attempt a population estimate. More than 10 ground-doves were caught on Olosega between 2001 and 2004, suggesting that numbers there are greater than on Ofu, but birds may move between the two islands (Seamon 2004a, in litt.), which once were a single land mass and are today connected by a causeway that is roughly 490 feet (ft) (150 meters (m)) long. No current population estimate is available; the secretive habits of this species make monitoring difficult. Monitoring surveys over the last 10 years do not, however, suggest any change in the relative abundance of the friendly ground-dove (Seamon 2004a, in litt.). The DMWR biologists regularly observe this species at several locations on Ofu and Olosega (DMWR 2013, in litt.), and have initiated a project to color-band the population in order to better describe their distribution and status on the two islands (Miles 2015b, in litt.). The American Samoa population of the friendly ground-dove likely persists at low absolute numbers (Amerson *et al.* 1982, p. 69; Engbring and Ramsey 1989, p. 57), and at low abundance relative to other Samoan forest bird species (Amerson *et al.* 1982, p. 69; Seamon 2004, in litt.; Tulafono 2006, in litt.; Pyle 2016, in litt.).

Distinct Population Segment (DPS) Analysis

Under the Act, we have the authority to consider for listing any species, subspecies, or for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To guide the implementation of the DPS provisions of the Act, we and the National Marine Fisheries Service (NOAA–Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted. Below, we evaluate the American Samoa population of the friendly ground-dove to determine whether it meets the definition of a DPS under our Policy.

Discreteness

Under our DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The American Samoa population of the friendly ground-dove, a cryptic, understory-dwelling dove not noted for long-distance dispersal, is markedly separate from other populations of the species. The genus *Gallicolumba* is widely distributed in the Pacific, but populations of the friendly ground-dove are restricted to a subset of islands (often small, offshore islets) in any archipelago where they occur, or even to limited areas of single islands in Polynesia (Steadman and Freifeld 1998, pp. 617–618; Freifeld *et al.* 2001, p. 79; Watling 2001, p. 118). Unlike other Pacific Island columbids, this species does not fly high above the canopy; it is an understory species that forages largely on the ground and nests near the ground (Watling 2001, p. 118). Furthermore, members of the genus that are restricted to individual archipelagos, single islands, or offshore islets are presumed to be relatively sedentary, weak, or reluctant fliers, with inter-island flights rarely observed (Baptista *et al.* 1997, pp. 95, 179–187, Freifeld *et al.* 2001, p. 79). Therefore, there is a low likelihood of frequent dispersal or immigration over the large distances that separate the American Samoa population on Ofu and Olosega islands from the other populations in Samoa (118 miles mi (190 km)), Tonga (430 mi (690 km)), and Fiji (more than 625 mi (1,000 km)). In addition, the American Samoan island of Tutuila lies between the American Samoa population and the nearest population in Samoa, and no Tutuila records of the friendly ground-dove exist. For these reasons, it is likely that populations of the friendly ground-dove, which occur in three archipelagos, are ecologically isolated from each other (*i.e.,* the likelihood is low that a population decimated or lost would be rebuilt by immigration from another population).

Based on our review of the available information, we have determined that the American Samoa population of the friendly ground-dove is markedly separate from other populations of the species due to geographic (physical) isolation from friendly ground-dove populations in Samoa, Tonga, and Fiji (Fig. 1). The geographic distance between the American Samoa population and other populations coupled with the low likelihood of frequent long-distance exchange between populations further separate the American Samoa population from other populations of this species throughout its range. Therefore, we have determined that the American Samoa population of friendly ground-dove meets a condition of our DPS policy for discreteness.

Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. At least one of these criteria is met. We have found substantial evidence that loss of the American Samoa population of the friendly ground-dove would constitute a significant gap in the range of this species, and thus this population meets our criteria for significance under our Policy.

The American Samoa population of the friendly ground-dove represents the easternmost distribution of this species. The loss of this population would truncate the species' range by approximately 100 mi (161 km), or approximately 15 percent of the linear extent of its range, which trends southwest-to-northeast from Fiji to Tonga to Wallis and Futuna, Samoa, and American Samoa. Unlike other Pacific Island columbids, this species does not fly high above the canopy; it is an understory species that forages largely on the ground and nests near the ground (Watling 2001, p. 118). Because of its flight limitations, the friendly ground-dove is unlikely to disperse over the long distances between American Samoa and the nearest surrounding populations. Therefore, the loss of the American Samoa population coupled with the low likelihood of recolonization from the nearest source populations in Samoa, Fiji, and Tonga would create a significant gap in the range of the friendly ground-dove.

Summary of DPS Analysis Regarding the American Samoa Population of the Friendly Ground-Dove

Given that both the discreteness and the significance elements of the DPS policy are met for the American Samoa population of the friendly ground-dove, we find that the American Samoa population of the friendly ground-dove is a valid DPS. Therefore, the American Samoa DPS of friendly ground-dove is a listable entity under the Act, and we now assess this DPS's conservation status in relation to the Act's standards for listing, (*i.e.,* whether this DPS meets the definition of an endangered or threatened species under the Act).

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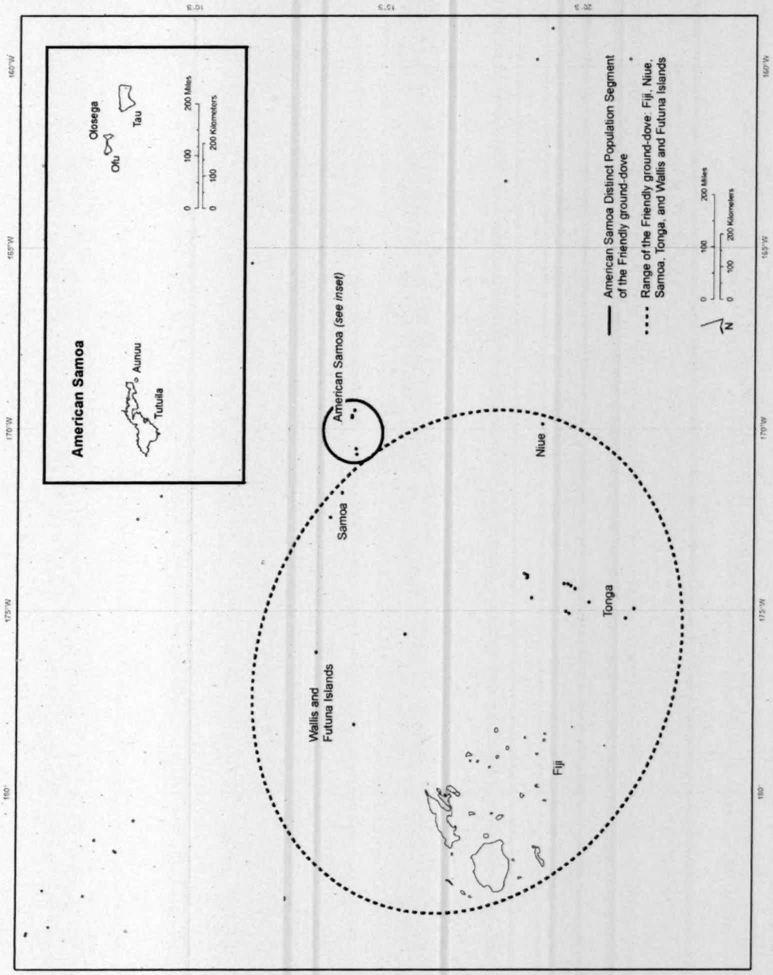
American Samoa
Olosega
Ofu
Tau
Aunuu
Tutuila
0 100 200 Miles
0 100 200 Kilometers
American Samoa (see inset)
Samoa
Niue
Tonga
Wallis and Futuna Islands
Fiji
American Samoa Distinct Population Segment of the Friendly ground-dove
Range of the Friendly ground-dove: Fiji, Niue, Samoa, Tonga, and Wallis and Futuna Islands
N
160°W
165°W
170°W
175°W
180°
10°S
15°S
20°S

Figure 1. The South Pacific Ocean, indicating the location of the American Samoa DPS of the friendly ground-dove and the global range of the species.

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Summary of Factors Affecting the American Samoa DPS of the Friendly Ground-Dove

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Destruction and Modification by Agriculture and Development

The loss or modification of lowland and coastal forests has been implicated as a limiting factor for populations of the friendly ground-dove and has likely pushed this species into more disturbed areas or forested habitat at higher elevations (Watling 2001, p. 118). Several thousand years of subsistence agriculture and more recent, larger-scale agriculture have resulted in the alteration and great reduction in area of forests at lower elevations in American Samoa (see Factor A discussion for the mao). On Ofu, the coastal forest where the ground-dove has been recorded, and which may be the preferred habitat for this species range-wide (Watling 2001, p. 118), largely has been converted to villages, grasslands, or coconut plantations (Whistler 1994, p. 127). However, none of the land-clearing or development projects proposed for Ofu or Olosega in recent years has been approved or initiated in areas known to be frequented by friendly ground-doves (Tulafono 2006, in litt.; Stein *et al.* 2014, p. 25). Based on the above information, we find that agriculture and development have caused substantial destruction and modification of the habitat of the friendly ground-dove in American Samoa and have likely resulted in the curtailment of its range in American Samoa. Habitat destruction and modification by agriculture is expected to continue into the future, but probably at a low rate; the human population on Ofu and Olosega has been declining over recent decades and was estimated at 176 (Ofu) and 177 (Olosega) in 2010 (American Samoa Government 2013, p. 8). However, because any further loss of habitat to land-clearing will further isolate the remaining populations of this species in American Samoa, we conclude that habitat destruction and modification by agriculture is a current threat to the American Samoa DPS of the friendly ground-dove that will continue in the future.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

The National Park of American Samoa (NPSA) was established to preserve and protect the tropical forest and archaeological and cultural resources, to maintain the habitat of flying foxes, to preserve the ecological balance of the Samoan tropical forest, and, consistent with the preservation of these resources, to provide for the enjoyment of the unique resources of the Samoan tropical forest by visitors from around the world (Pub. L. 100–571, Pub. L. 100–336). Under a 50-year lease agreement between local villages, the American Samoa Government, and the Federal Government, approximately 73 ac (30 ha) on Ofu Island are located within park boundaries (NPSA Lease Agreement 1993). While the majority of the park's land area on Ofu consists of coastal and beach habitat, approximately 30 ac (12 ha) in the vicinity of Sunuitao Peak may provide forested habitat for the friendly ground-dove.

Summary of Factor A

Past clearing for agriculture and development has resulted in the significant destruction and modification of coastal forest habitat for the American Samoa DPS of the friendly ground-dove. Land-clearing for agriculture is expected to continue in the future, but likely at a low rate. However, the degraded and fragmented status of the remaining habitat for the ground-dove is likely to be exacerbated by hurricanes (see Factor E discussion). While the NPSA provides some protection for the forested habitat required by the friendly ground-dove within the park, it is not of sufficient quantity to ameliorate the impacts from habitat loss elsewhere on Ofu and Olosega islands, or from habitat degradation and loss caused by hurricanes (inside and outside the park). Therefore, we consider habitat destruction and modification to be a threat to this DPS.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Pigeon-catching was a traditional practice in ancient Samoan society (Craig 2009, p. 104). Hunting of terrestrial birds and bats in American Samoa primarily for subsistence purposes continued until the documented decline of wildlife populations led to the enactment of a hunting ban and formal hunting regulations (Craig *et al.* 1994, pp. 345–346). The bird species most commonly taken were the Pacific pigeon or lupe (*Ducula ducula*) and the purple-capped fruit-dove or manutagi (*Ptilinopus porphyraceus*). Although the many-colored fruit dove or manuma (*Ptilinopus perousii*) is too rare to be sought by hunters, a few may have been killed each year by hunters in search of the Pacific pigeon or purple-capped fruit-dove (Craig 2009, p. 106). The accidental killing of the friendly ground-dove by hunters in pursuit of other bird species (during a sanctioned hunting season; see Factor D) has the potential to occur. Poaching is not considered a threat to the friendly ground-dove in American Samoa (Seamon 2004a, in litt.; 2004b, in litt.). In addition, the use of firearms on the islands of Ofu and Olosega has rarely, if ever, been observed (Caruso 2015a, in litt.). In the proposed rule, we had no information indicating that overutilization has led to the loss of populations or a significant reduction in numbers of the friendly ground-dove in American Samoa. We have received no new information. In summary, based on the best available scientific and commercial information, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the American Samoa DPS of the friendly ground-dove. When this final listing becomes effective (see **DATES**, above), research and collection of this species will be regulated through permits issued under section 10(a)(1)(A) of the Act.

Factor C: Disease or Predation

Disease

Research suggests that avian malaria may be indigenous and non-pathogenic in American Samoa, and, therefore, is unlikely to limit populations of the friendly ground-dove (Jarvi *et al.* 2003, p. 636; Seamon 2004a, in litt.). Although other blood parasites are common in many bird species in American Samoa, none have been reported to date in friendly ground-dove samples (Atkinson *et al.* 2006, p. 232). The best available information does not show there are other avian diseases that may be affecting this species.

Predation

Depredation by introduced mammalian predators is the likely cause of widespread extirpation of the friendly ground-dove throughout portions of its range (Steadman and Freifeld 1998, p. 617; Watling 2001, p. 118). Three species of rats occur in American Samoa and are likely to be present on the islands of Ofu and Olosega: The Polynesian rat, Norway rat, and black rat (Atkinson 1985, p. 38; DMWR 2006, p. 22; Caruso 2015b, in litt.). Domestic cats are widespread on Ofu and have been observed in the proximity of areas where friendly ground-doves have been detected (Arcilla 2015, in litt.). Feral cats are likely to occur on Olosega because of its physical connection to Ofu.

Predation by rats is well known to have caused population decline and extirpation in many island bird species (Atkinson 1977, p. 129; 1985, pp. 55–70; O'Donnell *et al.* 2015, pp. 24–26), especially species that nest on or near the ground or in burrows (Bertram and Nagorsen 1995, pp. 6–10; Flint 1999, p. 200; Carlile *et al.* 2003, p. 186). For example, black rats were responsible for the near extirpation of the burrow-nesting Galapagos petrel on Floreana Island (Cruz and Cruz 1987, pp. 3–13), and for the extinction of the ground-nesting Laysan rail (*Porzana palmeri*), which had been translocated to Midway Atoll prior to the loss of the Laysan population (Fisher and Baldwin 1946, p. 8). The best available information is not specific to rat predation on the American Samoa DPS of the friendly ground-dove, but the pervasive presence of rats throughout American Samoa makes it likely that they play a role in limiting populations of this species.

Predation by cats has been directly responsible for the extinction of numerous birds on oceanic islands (Medina *et al.* 2011, p. 6). Native mammalian carnivores are absent from oceanic islands because of their low dispersal ability, but once introduced by humans, they become significant predators on native animals such as seabirds and landbirds that are not adapted to predation by terrestrial carnivores (Nogales *et al.* 2013, p. 804; Scott *et al.* 1986, p. 363; Ainley *et al.* 1997, p. 24; Hess and Banko 2006, in litt.). Domestic cats have been observed in remote areas known to be frequented by ground-doves and may prey on friendly ground-doves and other species that nest on or near the ground (Arcilla 2015, in litt.). Therefore, the threat of predation by feral cats could have a significant influence on this species, particularly given that the American Samoa DPS of the friendly ground-dove population appears to be very small and limited to small areas on the islands of Ofu and Olosega.

Conservation Efforts To Reduce Disease or Predation

We are unaware of any conservation actions planned or implemented at this time to abate the threats of predation by feral cats or rats to the American Samoa DPS of the friendly ground-dove.

Summary of Factor C

In summary, based on the best available scientific and commercial information, we conclude that disease is not a factor in the continued existence of the friendly ground-dove. Because island birds such as the friendly ground-dove are extremely vulnerable to predation by nonnative predators, the threat of predation by rats and feral cats is likely to continue and is considered a threat to the continued existence of this DPS.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

In American Samoa no existing Federal laws, treaties, or regulations specify protection of the friendly ground-dove's habitat from the threat of deforestation, or address the threat of predation by nonnative mammals such as rats and feral cats. However, some existing Territorial laws and regulations have the potential to afford the species some protection, but their implementation does not achieve that result. The DMWR is given statutory authority to "manage, protect, preserve, and perpetuate marine and wildlife resources" and to promulgate rules and regulations to that end (ASCA, title 24, chapter 3). This agency conducts monitoring surveys, conservation activities, and community outreach and education about conservation concerns. However, to our knowledge, the DMWR has not used this authority to undertake conservation efforts for the friendly ground-dove such as habitat protection and control of nonnative predators such as rats and cats (DMWR 2006, pp. 79–80).

The Territorial Endangered Species Act provides for appointment of a Commission with the authority to nominate species as either endangered or threatened (ASCA, title 24, chapter 7). Regulations adopted under the Coastal Management Act (ASCA § 24.0501 *et seq.*) also prohibit the taking of threatened or endangered species (ASAC § 26.0220.I.c). However, the ASG has not listed the friendly ground-dove as threatened or endangered, so these regulatory mechanisms do not provide protection for this species.

Under ASCA, title 24, chapter 08 (Noxious Weeds), the Territorial DOA has the authority to ban, confiscate, and destroy species of plants harmful to the agricultural economy. Similarly, under ASCA, title 24, chapter 06 (Quarantine), the director of DOA has the authority to promulgate agriculture quarantine restrictions concerning animals. These laws may provide some protection against the introduction of new nonnative species that may have negative effects on the friendly ground-dove's habitat or become predators of the species, but these regulations do not require any measures to control invasive nonnative plants or animals that already are established and proving harmful to native species and their habitats (DMWR 2006, p. 80) (see Factor D for the Pacific sheath-tailed bat, above).

As described above, the Territorial Coastal Management Act establishes a land use permit (LUP) system for development projects and a Project Notification Review System (PNRS) for multi-agency review and approval of LUP applications (ASAC § 26.0206). The standards and criteria for review of LUP applications include requirements to protect Special Management Areas (SMA), Unique Areas, and "critical habitats" (ASCA § 24.0501 *et. seq.*). To date, the SMAs that have been designated (Pago Pago Harbor, Leone Pala, and Nuuuli Pala; ASAC § 26.0221), are all on Tutuila and do not provide habitat for the friendly ground-dove, which occurs only on the islands of Ofu and Olosega. The only Unique Area designated to date, the Ottoville Rainforest (American Samoa Coastal Management Program 2011, p. 52), also is on Tutuila and does not provide habitat for the friendly ground-dove. These laws and regulations are designed to ensure that "environmental concerns are given appropriate consideration," and include provisions and requirements that could address to some degree threats to native forest habitat required by the friendly ground-dove, even though individual species are not named (ASAC § 26.0202 *et seq.*). Because the implementation of these regulations has been minimal and review of permits is not rigorous, the permit system may not provide the habitat protection necessary to provide for the conservation of the friendly ground-dove and instead result in loss of native habitat important to this and other species as a result of land-clearing for agriculture and development (DMWR 2006, p. 71). We conclude that the implementation of the Coastal Management Act and its PNRS does not address the threat of habitat destruction and degradation to the friendly ground-dove to the extent that listing is not warranted (see Factor D for the Pacific sheath-tailed bat for further details).

Summary of Factor D

In summary, existing Territorial laws and regulatory mechanisms have the potential to offer some level of protection for the American Samoa DPS of the friendly ground-dove and its habitat but are not currently implemented in a manner that would do so. The DMWR has not exercised its statutory authority to address threats to the ground-dove such as predation by nonnative predators; the species is not listed pursuant to the Territorial Endangered Species Act; and the Coastal Management Act and its implementing regulations have the potential to address the threat of habitat loss to deforestation more substantively, but this law is inadequately implemented. Based on the best available information, some existing regulatory mechanisms have the potential to offer some protection of the friendly ground-dove and its habitat, but their implementation does not reduce or remove threats to the species such as habitat destruction or modification or predation by nonnative species. For these reasons, we conclude that existing regulatory mechanisms do not address the threats to the American Samoa DPS of the friendly ground-dove.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Hurricanes

Hurricanes may cause the direct and indirect mortality of the friendly ground-dove, as well as modify its already limited habitat (see Factor A above). This species has likely coexisted with hurricanes for millennia in American Samoa, and if the friendly ground-dove was widely distributed in American Samoa, had ample habitat and sufficient numbers, and was not under chronic pressure from anthropogenic threats such as habitat loss and introduced predators, it might recover from hurricane-related mortality and the temporary loss or redistribution of resources in the wake of severe storms. For example, Hurricanes Heta (in January 2004) and Olaf (in February 2005) destroyed suitable habitat for the friendly ground-dove at one of the areas on Olosega where this species was most frequently encountered; detections of ground-doves in other, less storm-damaged areas subsequently increased, suggesting they had moved from the area affected by the storms (Seamon 2005, in litt.; Tulafono 2006, in litt.). However, this species' current status in American Samoa makes it highly vulnerable to chance events, such as hurricanes.

Low Numbers of Individuals and Populations

Species with a low total number of individuals, restricted distributions, and small, isolated populations are often more susceptible to extinction as a result of natural catastrophes, demographic fluctuations, or inbreeding depression (Shaffer 1981, p. 131; see Factor E discussion for the Pacific sheath-tailed bat, above). The American Samoa DPS of the friendly ground-dove is at risk of extinction because of its probable low remaining number of individuals and distribution restricted to small areas on the islands of Ofu and Olosega, conditions that render this DPS vulnerable to the small-population stressors listed above. These stressors include environmental catastrophes, such as hurricanes, which could immediately extinguish some or all of the remaining populations; demographic stochasticity that could leave the species without sufficient males or females to be viable; and inbreeding depression or loss of adaptive potential that can be associated with loss of genetic diversity and result in eventual extinction. These small-population stressors are a threat to the American Samoa DPS of the friendly ground-dove, and this threat is exacerbated by habitat loss and degradation (Factor A) and predation by nonnative mammals (Factor C).

Effects of Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate (see Factor E discussion for the Pacific sheath-tailed bat). The magnitude and intensity of the impacts of global climate change and increasing temperatures on western tropical Pacific island ecosystems are currently unknown. In addition, there are no climate change studies that address impacts to the specific habitats of the American Samoa DPS of the friendly ground-dove. The scientific assessment completed by the Pacific Science Climate Science Program provides general projections or trends for predicted changes in climate and associated changes in ambient temperature, precipitation, hurricanes, and sea level rise for countries in the western tropical Pacific region including Samoa (Australian BOM and CSIRO 2011, Vol. 1 and 2; used as a proxy for American Samoa) (see Factor E discussion for the Pacific sheath-tailed bat).

Although we do not have specific information on the impacts of climate change to the American Samoa DPS of the friendly ground-dove, increased ambient temperature and precipitation, increased severity of hurricanes, and sea level rise and inundation would likely exacerbate other threats to its habitat. Although hurricanes are part of the natural disturbance regime in the tropical Pacific, and the friendly ground-dove has evolved in the presence of this disturbance, the projected increase in the severity of hurricanes resulting from climate change is expected to exacerbate the hurricane-related impacts such as habitat destruction and modification and availability of food resources of the friendly ground-dove, whose diet consists mainly of seeds, fruit, buds, and young leaves and shoots (Watling 2001, p. 118). The probability of species extinction as a result of climate change impacts increases when a species' range is restricted, its habitat decreases, and its numbers are declining (IPCC 2007, p. 8). The friendly ground-dove is limited by its restricted range, diminished habitat, and small population size. Therefore, we expect the friendly ground-dove to be particularly vulnerable to the environmental impacts of projected changes in climate and subsequent impacts to its habitat. Although we cannot predict the timing, extent, or magnitude of specific impacts, we do expect the effects of climate change to exacerbate the current threats to these species, such as habitat loss and degradation.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats of hurricanes, low numbers of individuals, and climate change effects that negatively affect the American Samoa DPS of the friendly-ground-dove.

Synergistic Effects

In our analysis of the five factors, we found that the American Samoa DPS of the friendly ground-dove is likely to be affected by loss of forest habitat, especially in lowland and coastal areas, predation by nonnative mammals, and the vulnerability of its small, isolated population to chance demographic and environmental occurrences. We also identify the effects of climate change as another source of risk to the species because increased ambient temperature and storm severity resulting from climate change are likely to exacerbate other, direct threats to the ground-dove in American Samoa, and in particular place additional stress on its habitat; these effects of climate change are projected to increase in the future. Multiple stressors acting in combination have greater potential to affect the ground-dove than each factor alone. For example, projected warmer temperatures and increased storm severity will likely enhance the spread of nonnative invasive plants in the ground-dove's coastal forest habitat. The combined effects of environmental, demographic, and catastrophic-event stressors, especially on a small population, can lead to a decline that is unrecoverable and results in extinction (Brook *et al.* 2008, pp. 457–458). The impacts of any one of the stressors described above might be sustained by a species with a larger, more resilient population, but in combination, habitat loss, predation, small-population risks, and effects of climate change have the potential to rapidly affect the size, growth rate, and genetic integrity of a species like the American Samoa DPS of the friendly ground-dove that persists as small, disjunct populations. Thus, the synergy among factors may result in greater impacts to the species than any one stressor by itself.

Determination for the American Samoa DPS of the Friendly Ground-Dove

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the American Samoa DPS of the friendly ground-dove. The American Samoa DPS of the friendly ground-dove is vulnerable to extinction because of its reduced population size and distribution, habitat loss, and depredation by nonnative mammals.

The habitat of the American Samoa DPS of the friendly ground-dove remains degraded and destroyed by past land-clearing for agriculture, and hurricanes exacerbate the poor status of this habitat, a threat that is likely to continue in the future (Factor A) and worsen under the projected effects of climate change. The threat of predation by nonnative mammals such as rats and cats is a current threat and likely to continue in the future (Factor C). The DPS of the friendly ground-dove persists in low numbers of individuals and in few and disjunct populations on two small islands (Factor E), a threat that interacts synergistically with other threats. These factors pose threats to the American Samoa DPS of the friendly ground-dove, whether we consider their effects individually or cumulatively. Current Territorial wildlife laws and regulations and conservation efforts do not address the threats to this DPS (Factor D), and these threats will continue in the future.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." Based on the severity and immediacy of threats currently affecting the species, we find that the American Samoa DPS of the friendly ground-dove is presently in danger of extinction throughout its range. The imminent threats of habitat loss and degradation, predation by nonnative rats and feral cats, the small number of individuals and populations, the effects of small population size, a range restricted to small areas of two small islands in American Samoa, and stochastic events such as hurricanes render this species in its entirety highly susceptible to extinction; for this reason, we find that threatened species status is not appropriate for the friendly ground-dove. Therefore, on the basis of the best available scientific and commercial information, we are listing the American Samoa DPS of the friendly ground-dove as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Because we have determined that the DPS of the friendly ground-dove is endangered throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577, July 1, 2014).

Snails

Eua zebrina

Eua zebrina, a tropical tree snail in the family Partulidae, occurs solely on the islands of Tutuila and Ofu in American Samoa. Snails in this family (which includes three genera: *Eua, Partula,* and *Samoana*) are widely distributed throughout the high islands of Polynesia, Melanesia, and Micronesia in the south- and west-Pacific basin (Johnson *et al.* 1986a, pp. 161–177; Goodacre and Wade 2001, p. 6; Lee *et al.* 2014, pp. 2, 6–8). Many of the roughly 120 or more partulid species, including *Eua zebrina,* are restricted to single islands or isolated groups of islands (Kondo 1968, pp. 75–77; Cowie 1992, p. 169).

The Samoan partulid tree snails in the genera *Eua* and *Samoana* are a good example of this endemism. Cowie's (1998) taxonomic work is the most recent and accepted taxonomic treatment of this species.

Eua zebrina varies in color ranging from almost white to pale-brown, to dark brown or purplish; with or without a zebra-like pattern of flecks and lines (Cowie and Cooke 1999, pp. 29–30). Most *E. zebrina* shells have transverse patterning (distinct coloration perpendicular to whorls) with a more flared aperture (*i.e.,* tapered or wide-rimmed shell lip) than species of the related genus *Samoana* (Cowie *et al.* in prep.). Adult Tutuila snail shells usually fall between 0.7 and 0.8 in (18 to 21 mm) in height and between 0.4 and 0.5 in (11 to 13 mm) in width.

The biology of Samoan partulid snails has not been extensively studied, but there is considerable information on the partulid snails of the Mariana Islands (Crampton 1925a, pp. 1–113; Cowie 1992, pp. 167–191; Hopper and Smith 1992, pp. 77–85) and Society Islands (Crampton 1925b, pp. 5–35; Crampton 1932, pp. 1–194; Murray *et al.* 1982, pp. 316–325; Johnson *et al.* 1986a, pp. 167–177; Johnson *et al.* 1986b, pp. 319–327). Snails in the family Partulidae are predominantly nocturnal, arboreal herbivores that feed mainly on partially decayed and fresh plant material (Murray 1972 cited in Cowie 1992, p. 175; Murray *et al.* 1982, p. 324; Cowie 1992, pp. 167, 175; Miller 2014, pers. comm.).

Partulids are slow growing and hermaphroditic (Cowie 1992, pp. 167, 174). Eggs develop within the maternal body and hatch within or immediately after extrusion; they may or may not receive nourishment directly from the parent prior to extrusion (Cowie 1992, p. 174). Some species in the family are known to be self-fertile, but most partulids rely predominantly on out-crossing (Cowie 1992, pp. 167, 174). Adult partulids generally live about 5 years and give birth about every 20 days, producing about 18 offspring per year (Cowie 1992, pp. 174, 179–180).

Partulids can have a single preferred host plant or multiple host plants, in addition to having preference toward anatomical parts of the plant (*i.e.,* leaves, branch, or trunk). Habitat partitioning may occur among three partulids on Tutuila (Murray *et al.* 1982, pp. 317–318; Cooke 1928, p. 6). Cooke (1928, p. 6) observed that *Samoana conica* and *S. abbreviata* were commonly found on trunks and branches, and *Eua zebrina* was commonly found on leaves, but could also be found on trunks and branches, as well as on the ground in the leaf litter. A similar partitioning of habitat has been reported for the *Partula* of the Society Islands (Murray *et al.* 1982, p. 316). The snails are typically found scattered on understory vegetation in forest with intact canopy 33 to 66 ft (10 to 20 m) above the ground (Cowie and Cook 1999, pp. 47–49; Cowie 2001, p. 219). The importance of native forest canopy and understory for Samoan land snails cannot be underestimated; all live snails were found on understory vegetation beneath intact forest canopy (Miller 1993, p. 16).

Review of long-term changes in the American Samoa land snail fauna based on surveys from 1975 to 1998 and pre-1975 collections characterized 3 of 12 species as being stable in numbers, with the rest described as declining in numbers, including *E. zebrina* (Solem 1975, as cited in Cowie 2001, pp. 214–216; Christensen 1980, p. 1; Miller 1993, p. 13; Cowie 2001, p. 215). *Eua zebrina* was historically known only from the island of Tutuila (Cowie and Cook 2001, p. 49), and until 1975, it was considered widespread and common (Cowie 2001, p. 215). The large number of collections (927) of this species from Tutuila between the 1920s and 1960s indicate this species was clearly widely distributed and abundant; some collections included hundreds of specimens (Cowie and Cook 2001, p. 154). In addition, the enormous number of shells of this species used in hotel chandeliers also suggests its previous abundance (Cowie 1993, p. 1). Then, in 1993, only 34 live individuals of *E. zebrina* were found at 2 of 9 sites on Tutuila, with only shells found at 4 other sites (Miller 1993, pp. 11–13). In a 1998 survey, *E. zebrina* was seen alive at 30 of 87 sites surveyed for land snails on Tutuila, and at 1 of 58 sites surveyed in the Manua Islands (Ofu, Olosega, and Tau), where it was observed for the first time on Ofu (Cowie and Cook 1999, pp. 13, 22; Cowie 2001, p. 215). During the 1998 survey, 1,102 live *E. zebrina* were recorded on Tutuila, and 88 live *E. zebrina* were recorded on Ofu (Cowie and Cook 1999, p. 30).

The uneven distribution of the 1,102 live snails on Tutuila suggests an overall decline in distribution and abundance; 479 live snails were recorded at 3 survey sites in one area, 165 live snails were recorded at 7 survey sites, and fewer than 10 snails were recorded at each of the remaining 20 sites (Cowie and Cook 1999, p. 30). On Tutuila, the survey sites with the highest numbers of *E. zebrina* (except one site, Amalau) are concentrated in the central area of the National Park of American Samoa: Toa Ridge, Faiga Ridge, and eastwards to the Vatia powerline trail and along Alava Ridge in these areas (Cowie and Cook 1999, p. 30). We are unaware of any systematic surveys conducted for *E. zebrina* since 1998; however, *E. zebrina* are still periodically observed by American Samoan field biologists (Miles 2015c, in litt.). Because the island of Ofu in the Manua Islands does not yet have the predatory rosy wolf snail (see *Factor C. Disease or Predation*), the population of *Eua zebrina* on Ofu is of major conservation significance (Cowie 2001, p. 217).

Summary of Factors Affecting Eua zebrina

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Destruction and Modification by Agriculture and Development

Several thousand years of subsistence agriculture and more recent plantation agriculture has resulted in the alteration and great reduction in area of forests on the relatively flat land at lower elevations throughout American Samoa (Whistler 1994, p. 40; Mueller-Dombois and Fosberg 1998, p. 361). The threat of land conversion to unsuitable habitat (*i.e.,* steep topography at elevations above the coastal plain) will accelerate if the human population continues to grow or if the changes in the economy shift toward commercial agriculture (DMWR 2006, p. 71).

On the island of Tutuila, the NPSA provides approximately 2,533 ac (1,025 ha) of forested habitat on Tutuila that is largely protected from clearing for agriculture and development and managed under a 50-year lease agreement with the American Samoa Government and multiple villages (NPSA Lease Agreement 1993). In addition, areas of continuous, undisturbed native forest on northwestern Tutuila outside of the NPSA boundaries may support additional populations of *E. zebrina,* but survey data for these areas are lacking. However, agriculture and urban development covers approximately 24 percent of the island, and up to 60 percent of the island contains slopes of less than 30 percent where additional land-clearing is feasible (ASCC 2010, p. 13; DWMR 2006, p. 25). Farmers are increasingly encroaching into some of the steep forested areas as a result of suitable flat lands already being occupied with urban development and agriculture (ASCC 2010, p. 13). Consequently, agricultural plots on Tutuila have spread from low elevations up to middle and some high elevations on Tutuila, significantly reducing the forest area and thus reducing the resilience of the native forest and populations of native snails. In addition, substantial housing increases are also projected to occur in some rural forests along the northern coastline of Tutuila, and in a few scattered areas near existing population bases with established roads (Stein *et al.* 2014, p. 24). These areas are outside of known snail locations within NPSA, but they do include forested habitat where snails may occur.

The development of roads, trails, and utility corridors has also caused habitat destruction and modification in or adjacent to existing populations of *Eua zebrina* on Tutuila (Cowie and Cook 1999, pp. 3, 30). Development and agriculture along the Alava Ridge road and in the areas surrounding the Amalau inholding within NPSA pose a threat to populations of *E. zebrina* in these areas (Whistler 1994, p. 41; Cowie and Cook 1999, pp. 48–49). In addition, construction activities, regular vehicular and foot trail access, and road maintenance activities cause erosion and the increased spread of nonnative plants resulting in further destruction or modification of habitat (Cowie and Cook 1999, pp. 3, 47–48). In summary, although the NPSA protects some forested habitat for the species, agriculture and development have contributed to habitat destruction and modification, and continue to be a threat to *E. zebrina* on Tutuila. The available information does not indicate that agriculture and development are a current threat to the single known population of *E. zebrina* on Ofu. However, because the vast majority of individuals and populations of this species occur on Tutuila, we consider agriculture and development to be a current and ongoing threat to *E. zebrina.*

Habitat Destruction or Modification by Feral Pigs

Feral pigs are known to cause deleterious impacts to ecosystem processes and functions throughout their worldwide distribution (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 201; Campbell and Long 2009, p. 2,319). Feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. Pigs are a major vector for the establishment and spread of invasive, nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170, 196–197), which also serve to fertilize disturbed soil (Siemann *et al.* 2009, p. 547). In addition, pig rooting and wallowing contributes to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 18–19; Gagne and Cuddihy 1999, p. 52; Nogueira-Filho *et al.* 2009, p. 3,681; CNMI–SWARS 2010, p. 15; Dunkell *et al.* 2011, pp. 175–177; Kessler 2011, pp. 320, 323).

Erosion resulting from rooting and trampling by pigs impacts native plant communities by contributing to watershed degradation, alteration of plant nutrient status, and increasing the likelihood of landslides (Vitousek *et al.* 2009, pp. 3,074–3,086; Chan-Halbrendt *et al.* 2010, p. 251; Kessler 2011, pp. 320–324). In the Hawaiian Islands, pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests and are widely recognized as one of the greatest current threats to Hawaii's forest ecosystems (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195).

Feral pigs have been present in American Samoa since humans settled these islands (American Samoa Historic Preservation Office 2015, in litt.). In the past, hunting pressure kept their numbers down, however, increasing urbanization and increasing availability of material goods has resulted in the decline in the practice of pig hunting to almost nothing (Whistler 1992, p. 21; 1994, p. 41). Feral pigs are moderately common to abundant in many forested areas, where they spread invasive plants, damage understory vegetation, and destroy riparian areas by their feeding and wallowing behavior (DMWR 2006, p. 23; ASCC 2010, p. 15). Feral pigs are a serious problem in the NPSA because of the damage they cause to native vegetation through their rooting and wallowing (Whistler 1992, p. 21; 1994, p. 41; Hoshide 1996, p. 2; Cowie and Cook 1999, p. 48; Togia pers. comm. in Loope *et al.* 2013, p. 321). Pig densities have been reduced in some areas (Togia 2015, in litt.), but without control methods that effectively reduce feral pig populations, they are likely to persist and remain high in areas that provide habitat for *E. zebrina* (Hess *et al.* 2006, p. 53; ASCC 2010, p. 15). Based on the reliance of *E. zebrina* on understory vegetation under native forest canopy, as well as the snail's potential to feed on the ground in the leaf litter, the actions by feral pigs of rooting, wallowing, and trampling, and the associated impacts to native vegetation and soil, negatively affect the habitat of *E. zebrina* and are a current threat to the species.

Habitat Destruction and Modification by Nonnative Plant Species

Nonnative plant species can seriously modify native habitat and render it unsuitable for native snail species (Hadfield 1986, p. 325). Although some Hawaiian tree snails have been recorded on nonnative vegetation, it is more generally the case that native snails throughout the Pacific are specialized to survive only on the native plants with which they have evolved (Cowie 2001, p. 219). Cowie (2001, p. 219) reported few observations of native snails, including *Eua zebrina,* in disturbed habitats on Tutuila.

The native flora of the Samoan archipelago (plant species that were present before humans arrived) consisted of approximately 550 taxa, 30 percent of which were endemic (species that occur only in the American Samoa and Samoa) (Whistler 2002, p. 8). An additional 250 plant species have been intentionally or accidentally introduced and have become naturalized with 20 or more of these considered invasive or potentially invasive in American Samoa (Whistler 2002, p. 8; Space and Flynn 2000, pp. 23–24). Of these approximately 20 or more nonnative pest plant species, at least 10 have altered or have the potential to alter the habitat of the species listed in this final rule (Atkinson and Medeiros 2006, p. 18; Craig 2009, pp. 94, 97–98; ASCC 2010, p. 15).

Nonnative plants can degrade native habitat in Pacific island environments by: (1) Modifying the availability of light through alterations of the canopy structure; (2) altering soil–water regimes; (3) modifying nutrient cycling; (4) ultimately converting native-dominated plant communities to nonnative plant communities; and (5) increasing the frequency of landslides and erosion (Smith 1985, pp. 217–218; Cuddihy and Stone, 1990, p. 74; Matson 1990, p. 245; D'Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, pp. 6–9; Atkinson and Medeiros 2006, p. 16). Nonnative plant species often exploit the disturbance caused by other factors such as hurricanes, agriculture and development, and feral ungulates, and thus, in combination reinforce or exacerbate their negative impacts to native habitats. Although the areas within the National Park of American Samoa on the islands of Tutuila, Ofu, and Tau contain many areas that are relatively free of human disturbance and nonnative plant invasion and largely represent pre-contact vegetation, the threat of invasion and further spread by nonnative plant species poses immense cause for concern (Space and Flynn 2000, pp. 23–24; Craig 2009, pp. 94, 96–98; Atkinson and Medeiros 2006, p. 17; ASCC 2010, p. 22; ASCC 2010, p. 15).

For brief descriptions of the nonnative plants that impose the greatest negative impacts to the native habitats in American Samoa, please refer to the proposed rule (80 FR 61568; October 13, 2015). In summary, based on the habitat-modifying impacts of nonnative plant species, habitat destruction and modification by nonnative plant species is and will continue to be a threat to *Eua zebrina.*

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Several programs and partnerships to address the threat of habitat modification by nonnative plant species and feral pigs have been established and are ongoing within areas that provide habitat for *E. zebrina* (see Factor A discussion for the mao). In addition, approximately 2,533 ac (1,025 ha) of forested habitat within the Tutuila Unit of the NPSA are protected and managed under a 50-year lease agreement with the American Samoa Government and multiple villages contributing to the conservation of *E. zebrina* (NPSA Lease Agreement 1993). Although the habitat for *E. zebrina* within the national park is protected from large-scale land-clearing, it is not protected from modification by feral pigs or invasive plants inside or outside of the park.

Summary of Factor A

In summary, based on the best available scientific and commercial information, we consider the threats of destruction, modification, and curtailment of the species habitat and range to be ongoing threats to *Eua zebrina.* The decline of the native land snails in American Samoa has resulted, in part, from the loss of native habitat to agriculture and development, disturbance by feral pigs, and the establishment of nonnative plant species; these threats are ongoing, and are likely exacerbated by impacts to native forest structure from hurricanes. While there are some efforts to address these impacts, such as establishment of the NPSA, they do not address habitat degradation and destruction by nonnative mammals and plants where the snail occurs to the extent that listing is not warranted. All of the above threats are ongoing and interact to exacerbate the negative impacts and increase the vulnerability of extinction of *E. zebrina.*

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Tree snails can be found around the world in tropical and subtropical regions and have been valued as collectibles for centuries. For example, the endemic Hawaiian tree snails within the family Achatinellidae were extensively collected for scientific and recreational purposes by Europeans in the 18th to early 20th centuries (Hadfield 1986, p. 322). During the 1800s, collectors sometimes took more than 4,000 snails in several hours (Hadfield 1986, p. 322). Repeated collections of hundreds to thousands of individuals may have contributed to decline in these species by reduction of reproductive potential (removal of breeding adults) as well as by reduction of total numbers (Hadfield 1986, p. 327). In the Hawaiian genus *Achatinella,* noted for its colorful variations, 22 species are now extinct and the remaining 19 species endangered due in part to this original collection pressure (Hadfield 1986, p. 320).

In the proposed rule, we erroneously included "overutilization for scientific purposes" in our assessment of threats to *Eua zebrina.* We maintain that collection for scientific purposes likely contributed to a reduction in the number of *E. zebrina* in the wild; however, we recognize that at the time the majority of collections were made for scientific purposes, *E. zebrina* was neither at risk of extinction nor did the numbers collected increase the risk of its extinction.

In American Samoa, thousands of partulid tree snail shells (mostly *E. zebrina*) have been collected and used for decorative purposes (*e.g.,* chandeliers) (Cowie 1993, pp. 1, 9). In general, the collection of tree snails persists to this day, and the market for rare tree snails serves as an incentive to collect them. A recent search of the Internet found a Web site advertising the sale of *E. zebrina* as well as three other Partulid species (Conchology, Inc. 2015, in litt.). Based on the history of collection of *E. zebrina,* the evidence of its sale on the Internet, and the vulnerability of the small remaining populations of this species, we consider over-collection for commercial and recreational purposes to be a threat to the continued existence of *E. zebrina.* When this final listing becomes effective (see **DATES**, above), research and collection of this species will be regulated through permits issued under section 10(a)(1)(A) of the Act.

Factor C: Disease or Predation

Disease

We are not aware of any threats to *Eua zebrina* that would be attributable to disease.

Predation by Nonnative Snails

At present, the major existing threat to long-term survival of the native snail fauna in American Samoa is predation by the nonnative rosy wolf snail, the most commonly recommended biological control agent of the giant African snail (*Achatina fulica*), which also is an invasive nonnative species in

American Samoa. In 1980, the rosy wolf snail was released on Tutuila to control the giant African snail (Lai and Nakahara 1980 as cited in Miller 1993, p. 9). By 1984, the rosy wolf snail was considered to be well established on Tutuila, having reached the mountains (Eldredge 1988, pp. 122, 124–125), and by 2001 was reported as widespread within the National Park of American Samoa on Tutuila (Cowie and Cook 2001, pp. 156–157). While there are no records of introduction of the rosy wolf snail to the Manua Islands (Ofu, Olosega, and Tau), this species has been reported on Tau (Miller 1993, p. 10). The absence of the rosy wolf snail on the islands of Ofu and Olosega is significant because *E. zebrina* is present on Ofu (Miller 1993, p. 10, Cowie and Cook 2001, p. 143; Cowie *et al.* 2003, p. 39).

Numerous studies show that the rosy wolf snail feeds on endemic island snails and is a major agent in their declines and extinctions (Hadfield and Mountain 1981, p. 357; Howarth 1983, p. 240, 1985, p. 161, 1991, p. 489; Clarke *et al.* 1984, pp. 101–103; Hadfield 1986, p. 327; Murray *et al.* 1988, pp. 150–153; Hadfield *et al.* 1993, pp. 616–620; Cowie 2001, p. 219). Live individuals of the rosy wolf snail have been observed within meters of partulids on Tutuila, including *E. zebrina* and *Samoana conica* (Miller 1993, p. 10). Shells of *E. zebrina* and *S. conica* were found on the ground at several of the locations surveyed on Tutuila, along with numerous shells and an occasional live individual of the rosy wolf snail (Miller 1993, pp. 13, 23–28). The population of *E. zebrina* on Nuusetoga Island, a small islet off the north shore of Tutuila, was probably isolated from an ancestral parent population on Tutuila in prehistoric time (Miller 1993, p. 13). No live rosy wolf snails were found on this offshore islet in 1992, and *E. zebrina* on the islet were deemed safe from predatory snails at that time (Miller 1993, p. 13). Due to the widespread presence of the rosy wolf snail on Tutuila and the high probability of its unintentional introduction into additional areas within the range of *E. zebrina*, predation by the rosy wolf snail is a current threat to *E. zebrina* that will continue into the future.

Predation by several other nonnative carnivorous snails, *Gonaxis kibweziensis, Streptostele musaecola,* and *Gulella bicolor*, has been suggested as a potential threat to *Eua zebrina* and other native land snails. Species of *Gonaxis*, also widely introduced in the Pacific in attempts to control the giant African snail, have been implicated, though less strongly, in contributing to the decline of native snail species in the region (Cowie and Cook 1999, p. 46). *Gonaxis kibweziensis* was introduced on Tutuila in American Samoa in 1977 (Eldredge 1988, p. 122). This species has been reported only from Tutuila (Miller 1993, p. 9, Cowie and Cook 1999, p. 36) and is not as common as the rosy wolf snail (Miller 1993, p. 11). However, the two other predatory snails have been recorded on the Manua Islands: *S. musaecola* from Tutuila, Tau, and Ofu; and *G. bicolor* on Ofu (Cowie and Cook 1999, pp. 36–37).

The potential impacts of these two species on the native fauna are unknown; both are much smaller than the rosy wolf snail and *G. kibweziensis* and were rarely observed during surveys (Cowie and Cook 1999, pp. 36–37, 46). However, Solem (1975 as cited in Miller 1993, p. 16) speculated that *S. musaecola* might have a role in the further decline of native species, and Miller (1993, p. 16) considered that it "undoubtedly had a negative impact." Despite the lack of current information on the abundance of *G. kibweziensis*, but because of its predatory nature and the declining trend and small remaining populations of *E. zebrina*, we consider this species to be a threat to the continued existence *E. zebrina*. However, because of their previously observed low abundance and comparatively small size, and the lack of specific information regarding their impacts to *E. zebrina*, we do not consider predation by *G. bicolor* or *S. musaecola* to be a threat to the continued existence of *E. zebrina*. In summary, predation by the nonnative rosy wolf snail and *Gonaxis kibweziensis* is a current threat to *E. zebrina* and will continue into the future.

Predation by the New Guinea or Snail-Eating Flatworm

Predation by the nonnative New Guinea or snail-eating flatworm (*Platydemus manokwari*) is a threat to *E. zebrina*. The extinction of native land snails on several Pacific Islands has been attributed to this terrestrial flatworm, native to western New Guinea (Ohbayashi *et al.* 2007, p. 483; Sugiura 2010, p. 1,499). The New Guinea flatworm was released in an unsanctioned effort to control the giant African snail (*Achatina fulica*) in Samoa in the 1990s (Cowie and Cook 1999, p. 47). In 2002, this species was likely present within the Samoan archipelago but was not yet introduced to American Samoa (Cowie 2002, p. 18). However, by 2004, this predatory flatworm had been found on the islands of Tutuila and Tau (Craig 2009, p. 84).

The New Guinea flatworm has contributed to the decline of native tree snails due to its ability to ascend into trees and bushes (Sugiura and Yamaura 2009, p. 741). Although mostly ground-dwelling, the New Guinea flatworm has also been observed to climb trees and feed on partulid tree snails (Hopper and Smith 1992, p. 82). Areas with populations of the flatworm usually lack partulid tree snails or have declining numbers of snails (Hopper and Smith 1992, p. 82). Because *E. zebrina* feeds on the ground as well as in shrubs and trees, it faces increased risk of predation by the New Guinea flatworm (Cooke 1928, p. 6). In summary, due to the presence of the New Guinea flatworm on Tutuila, and the high probability of its accidental introduction to the islands of Ofu and Olosega, predation by the New Guinea flatworm is a current threat to *E. zebrina* that will continue into the future.

Predation by Rats

Rats are likely responsible for the greatest number of animal extinctions on islands throughout the world, including extinctions of various snail species (Towns *et al.* 2006, p. 88). Rats are known to prey upon arboreal snails endemic to Pacific islands and can devastate populations (Hadfield *et al.* 1993, p. 621). Rat predation on tree snails has been observed on the Hawaiian Islands of Lanai (Hobdy 1993, p. 208; Hadfield 2005, in litt, p. 4), Molokai (Hadfield and Saufler 2009, p. 1,595), and Maui (Hadfield 2006, in litt.). Three species of rats are present in American Samoa: The Polynesian rat, probably introduced by early Polynesian colonizers, and Norway and black rats, both introduced subsequent to western contact (Atkinson 1985, p. 38; Cowie and Cook 1999, p. 47; DMWR 2006, p. 22). Polynesian and Norway rats are considered abundant in American Samoa, but insufficient data exist on the populations of black rats (DMWR 2006, p. 22).

Evidence of predation by rats on *E. zebrina* was observed at several locations on Tutuila (Miller 1993, pp. 13, 16). Shells of *E. zebrina* were damaged in a fashion that is typical of rat predation; the shell is missing a large piece of the body whorl or the apex (Miller 1993, p. 13). Old shells may be weathered in a similar fashion, except that the fracture lines are not sharp and angular. Frequent evidence of predation by rats was also observed on native land snails during subsequent surveys (Cowie and Cook 1999, p. 47). In summary, based on the presence of rats on Tutuila and Ofu, evidence of predation, and the effects of rats on native land snail populations, predation by rats is a threat to *E. zebrina* and is likely to continue to be a threat in the future.

Conservation Efforts To Reduce Disease or Predation

We are unaware of any conservation actions planned or implemented at this time to abate the threats of predation by rats, nonnative snails, or flatworms to *E. zebrina.*

Summary of Factor C

In summary, based on the best available scientific and commercial information, we consider predation by the rosy wolf snail, *Gonaxis kibweziensis,* New Guinea flatworm, and rats to be a threat to *E. zebrina* that will continue in the future.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

No existing Federal laws, treaties, or regulations specify protection of *E. zebrina's* habitat from the threat of deforestation, or address the threat of predation by nonnative species such as rats, the rosy wolf snail, and the New Guinea flatworm. Some existing Territorial laws and regulations have the potential to afford *E. zebrina* some protection, but their implementation does not achieve that result. The DMWR is given statutory authority to "manage, protect, preserve, and perpetuate marine and wildlife resources" and to promulgate rules and regulations to that end (ASCA, title 24, chapter 3). This agency conducts monitoring surveys, conservation activities, and community outreach and education about conservation concerns. However, to our knowledge, the DMWR has not used this authority to undertake conservation efforts for *E. zebrina* such as habitat protection and control of nonnative molluscs and rats (DMWR 2006, pp. 79–80).

The Territorial Endangered Species Act provides for appointment of a Commission with the authority to nominate species as either endangered or threatened (ASCA, title 24, chapter 7). Regulations adopted under the Coastal Management Act (ASCA § 24.0501 *et seq.*) also prohibit the taking of threatened or endangered species (ASAC § 26.0220.I.c). However, the ASG has not listed *E. zebrina* as threatened or endangered, so these regulatory mechanisms do not provide protection for this species.

Under ASCA, title 24, chapter 08 (Noxious Weeds), the Territorial DOA has the authority to ban, confiscate, and destroy species of plants harmful to the agricultural economy. Similarly, under ASCA, title 24, chapter 06 (Quarantine), the director of DOA has the authority to promulgate agriculture quarantine restrictions concerning animals. These laws may provide some protection against the introduction of new nonnative species that may have negative effects on *E. zebrina's* habitat or become predators of the species, but these regulations do not require any measures to control invasive nonnative plants or animals that already are established and proving harmful to native species and their habitats (DMWR 2006, p. 80) (see Factor D for the Pacific sheath-tailed bat, above).

As described above, the Territorial Coastal Management Act establishes a land use permit (LUP) system for development projects and a Project Notification Review System (PNRS) for multi-agency review and approval of LUP applications (ASAC § 26.0206). The standards and criteria for review of LUP applications include requirements to protect Special Management Areas (SMA), Unique Areas, and "critical habitats" (ASCA § 24.0501 *et. seq.*). To date, all of the SMAs that have been designated (Pago Pago Harbor, Leone Pala, and Nuuuli Pala; ASAC § 26.0221) are in coastal and mangrove habitats on the south shore of Tutuila and do not provide habitat for *E. zebrina.* The only Unique Area designated to date is the Ottoville Rainforest (American Samoa Coastal Management Program 2011, p. 52), also on Tutuila's south shore, which could provide habitat for *E. zebrina,* but it is a relatively small island of native forest in the middle of the heavily developed Tafuna Plain (Trail 1993, p. 4), and we do not have any information that the species occurs there.

These laws and regulations are designed to ensure that "environmental concerns are given appropriate consideration," and include provisions and requirements that could address to some degree threats to native forest habitat required by *E. zebrina* on Tutuila and Ofu, even though individual species are not named (ASAC § 26.0202 *et seq.*). Because the implementation of these regulations has been minimal and review of permits is not rigorous, issuance of permits may not provide the habitat protection necessary to provide for the conservation of *E. zebrina,* and land-clearing for agriculture and development have continued to impact the species (DMWR 2006, p. 71). We conclude that the implementation of the Coastal Management Act and its PNRS does not address the threat of habitat destruction and degradation to *E. zebrina* (see Factor D for the Pacific sheath-tailed bat for further details).

Summary of Factor D

In summary, existing Territorial laws and regulatory mechanisms have the potential to offer some level of protection for *E. zebrina* and its habitat but are not currently implemented in a manner that would do so. The DMWR has not exercised its statutory authority to address threats to *E. zebrina* such as predation by nonnative predators, and the species is not listed pursuant to the Territorial Endangered Species Act.

The Coastal Management Act and its implementing regulations have the potential to address the threat of habitat loss to deforestation more substantively, but in practice do not appear to do so. Based on the best available information, some existing regulatory mechanisms have the potential to offer some protection of *E. zebrina* and its habitat, but their implementation does not reduce or remove threats to the species such as habitat destruction or modification or predation by nonnative species. For these reasons, we conclude that existing regulatory mechanisms do not address the threats to *E. zebrina.*

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Hurricanes

Hurricanes are a common natural disturbance in the tropical Pacific and have occurred in American Samoa with varying frequency and intensity (see Factor E discussion for the Pacific sheath-tailed bat). Hurricanes may adversely impact the habitat of *E. zebrina* by destroying vegetation, opening the canopy, and thus modifying the availability of light and moisture, and creating disturbed areas conducive to invasion by nonnative plant species (Elmqvist *et al.* 1994, p. 387; Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 539–540; Lugo 2008, pp. 373–375, 386). Such impacts destroy or modify habitat elements (*e.g.,* stem, branch, and leaf surfaces, undisturbed ground, and leaf litter) required to meet the snails' basic life-history requirements. In addition, high winds and intense rains from hurricanes can also dislodge individual snails from the leaves and branches of their host plants and deposit them on the forest floor where they may be crushed by falling vegetation or exposed to predation by nonnative rats and snails (see "Disease or Predation," above) (Hadfield 2011, pers. comm.).

The negative impact on *E. zebrina* caused by hurricanes was strongly suggested by surveys that failed to detect any snails in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991) (Miller 1993, p. 16). Under natural conditions, loss of forest canopy to hurricanes did not pose a great threat to the long-term survival of these snails because there was enough intact forest with healthy populations of snails that would support dispersal back into newly regrown canopy forest. Similarly, forest damage may only be temporary and limited to defoliation or minor canopy damage, and vary depending on the aspect of forested areas in relation to the direction of approaching storms (Pierson *et al.* 1992, pp. 15–16). In general, forests in American Samoa, having evolved with the periodic disturbance regime of hurricanes, show remarkable abilities for regeneration and recovery, apart from catastrophic events (Webb *et al.* 2011, pp. 1,248–1,249).

Nevertheless, the destruction of native vegetation and forest canopy, and modification of light and moisture conditions both during and in the months and possibly years following hurricanes, can negatively impact the populations of *E. zebrina*. In addition, today, the impacts of habitat loss and degradation caused by other factors such as nonnative plant species (see "Habitat Destruction and Modification by Nonnative Plant Species" above), agriculture and urban development (see "Habitat Destruction and Modification by Agriculture and Development" above) and feral pigs (see "Habitat Destruction and Modification by Feral Pigs"), are exacerbated by hurricanes. As snail populations decline and become increasingly isolated, future hurricanes are more likely to lead to the loss of populations or the extinction of species such as this one that rely on the remaining canopy forest. Therefore, we consider the threat of hurricanes to be a factor in the continued existence of *E. zebrina*.

Low Numbers of Individuals and Populations

Species that undergo significant habitat loss and degradation and other threats resulting in decline and range reduction are inherently highly vulnerable to extinction resulting from localized catastrophes such as severe storms or disease outbreaks, climate change effects, and demographic stochasticity (Gilpin and Soulé 1986, pp. 24–34; Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607). Conditions leading to this level of vulnerability are easily reached by island species that face numerous threats such as those described above for *E. zebrina*. Small, isolated populations that are diminished by habitat loss, predation, and other threats can exhibit reduced levels of genetic variability, which can diminish the species' capacity to adapt to environmental changes, thereby increasing the risk of inbreeding depression and reducing the probability of long-term persistence (Shaffer 1981, p. 131; Gilpin and Soulé 1986, pp. 24–34; Pimm *et al.* 1988, p. 757). The problems associated with small occurrence size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by interactions with other threats, such as those discussed above (see Factor A, Factor B, and Factor C, above).

We consider *E. zebrina* vulnerable to extinction because of threats associated with low numbers of individuals and low numbers of populations. This species has suffered a serious decline and is limited by its slow reproduction and growth (Cowie and Cook 1999, p. 31). Threats to *E. zebrina* include: habitat destruction and modification by hurricanes, agriculture and development, nonnative plant species and feral pigs; collection and overutilization; and predation by the rosy wolf snail, *Gonaxis kibweziensis*, and the New Guinea flatworm. The effects of these threats are compounded by the current low number of individuals and populations of *E. zebrina*.

Effects of Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate (see Factor E discussion for the Pacific sheath-tailed bat). The magnitude and intensity of the impacts of global climate change and increasing temperatures on western tropical Pacific island ecosystems currently are unknown. In addition, there are no climate change studies that address impacts to the specific habitats of *E. zebrina*. The scientific assessment completed by the Pacific Science Climate Science Program (Australian BOM and CSIRO 2011, Vol. 1 and Vol. 2) provides general projections or trends for predicted changes in climate and associated changes in ambient temperature, precipitation, hurricanes, and sea level rise for countries in the western tropical Pacific region including Samoa (used as a proxy for American Samoa) (see Factor E discussion for the Pacific sheath-tailed bat for additional discussion).

Although we do not have specific information on the impacts of the effects of climate change to *E. zebrina*, increased ambient temperature and precipitation and increased severity of hurricanes will likely exacerbate other threats to this species as well as provide additional stresses on its habitat. The probability of species extinction as a result of climate change impacts increases when its range is restricted, habitat decreases, and numbers of populations decline (IPCC 2007, p. 48). *Eua zebrina* is limited by its restricted range in small areas on two islands and small total population size. Therefore, we expect this species to be particularly vulnerable to environmental impacts of climate change and subsequent impacts to its habitat. Although we cannot predict the timing, extent, or magnitude of specific impacts, we do expect the effects of climate change to exacerbate the current threats to this species, such as habitat loss and degradation.

Conservation Efforts to Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats of hurricanes, low numbers of individuals, and effects of climate change that negatively affect *E. zebrina*.

Synergistic Effects

In our analysis of the five factors, we found that the snail *Eua zebrina* is likely to be affected by loss of forest habitat, overcollection for commercial purposes, predation by nonnative snails, flatworms, and rats, and the vulnerability of its small, isolated populations to chance demographic and environmental occurrences. We also identify climate change effects as another source of risk to the species because increased ambient temperature and storm severity resulting from climate change are likely to exacerbate other direct threats to *E. zebrina* in American Samoa, and in particular place additional stress on its habitat; these effects of climate change are projected to increase in the future. Multiple stressors acting in combination have greater potential to affect *E. zebrina* than each factor alone. For example, projected warmer temperatures may enhance reproduction in nonnative predatory snails and flatworms or the spread of nonnative invasive plants. The combined effects of environmental, demographic, and catastrophic-event stressors, especially on small populations, can lead to a decline that is unrecoverable and results in extinction (Brook *et al.* 2008, pp. 457–458). The impacts of any one of the stressors described above might be sustained by a species with larger, more resilient populations, but in combination, habitat loss, predation, small-population risks, and climate change have the potential to rapidly affect the size, growth rate, and genetic integrity of a species like *E. zebrina* that persists as small, disjunct populations. Thus, the synergy among factors may result in greater impacts to the species than any one stressor by itself.

Determination for Eua zebrina

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *E. zebrina*. This endemic partulid tree snail restricted to the islands of Tutuila and Ofu in American Samoa has declined dramatically in abundance and is expected to continue along this declining trend in the future.

The threat of habitat destruction and modification from agriculture and development, nonnative plant species, and feral pigs is occurring throughout the range of *E. zebrina* and is not likely to be reduced in the future (Factor A). The threat of overutilization for commercial and recreational purposes has likely contributed to the historical decline of *E. zebrina,* is a current threat to the species, and is likely to continue into the future (Factor B). The threat of predation from nonnative snails, a nonnative predatory flatworm, and rats is of the highest magnitude, and likely to continue in the future (Factor C).

Additionally, the low numbers of individuals and populations of *E. zebrina* are likely to continue (Factor E), and these small isolated populations face increased risk of extinction from stochastic events such as hurricanes. Small population threats are compounded by the threats of habitat destruction and modification, overutilization, predation, and regulatory mechanisms that do not address the threats to the species. These factors pose threats to *E. zebrina* whether we consider their effects individually or cumulatively. Current Territorial wildlife laws and conservation efforts do not address the threats to the species (Factor D), and these threats will continue in the future.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that *Eua zebrina* is presently in danger of extinction throughout its entire range based on the severity and immediacy of the ongoing and projected threats described above. The imminent threats of habitat loss and degradation, predation by nonnative snails and flatworms, the small number of individuals, limited distribution, the effects of small population size, and stochastic events such as hurricanes render this species in its entirety highly susceptible to extinction; for this reason, we find that threatened species status is not appropriate for *Eua zebrina*. Therefore, on the basis of the best available scientific and commercial information, we are listing *Eua zebrina* as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. Because we have determined that the snail *E. zebrina* is endangered throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577, July 1, 2014).

Ostodes strigatus

Ostodes strigatus, a light tan- to cream-colored tropical ground-dwelling snail in the family Poteriidae, is endemic to the island of Tutuila in American Samoa (Girardi 1978, pp. 193, 214; Miller 1993, p. 7). *Ostodes strigatus* is a member of the superfamily Cyclophoroidea and the family Poteriidae (= Neocyclotidae) (Cowie 1998, p. 24; Girardi 1978, p. 192; Vaught 1989, p. 16; ITIS 2015c). The family Poteriidae consists of tropical land snails throughout Central America, the northern end of South America, and the South Pacific. The genus *Ostodes* is endemic to the Samoan archipelago (Girardi 1978, pp. 191, 242). The defining characteristics of species within the family Poteriidae include a pallium cavity (lung-like organ) and an operculum (a shell lid or "trap door" used to close the shell aperture when the snail withdraws inward, most commonly found in marine snails) (Girardi 1978, pp. 214, 222–224; Vaught 1989, p. 16; Barker 2001, pp. 15, 25).

Ostodes strigatus has a white, turbinate (depressed conical) shell with 4 to 5 whorls and distinctive parallel ridges, reaching a size of 0.3 to 0.4 in (7 to 11 mm) in height, 0.4 to 0.5 in (9 to 12 mm) in diameter at maturity (Girardi 1978, pp. 222–223; Abbott 1989, p. 43). Its operculum is acutely concave to cone-shaped, with broad, irregular spirals from center to edge (Girardi 1978, pp. 198, 213, 222–224). True radial patterning is seldom found on the upper shell surface, and never on the ventral surface, which is usually entirely smooth (Girardi 1978, p. 223).

Ostodes strigatus is found on the ground in rocky areas under relatively closed canopy with sparse understory plant coverage at elevations below 1,280 ft (390 m) (Girardi 1978, p. 224; Miller 1993, pp. 13, 15, 23, 24, 27). Moisture supply is the principal environmental influence on *Ostodes* land snails (Girardi 1978, p. 245). The degree of moisture retention is controlled primarily by vegetation cover, with heavy forest retaining moisture at ground level longer than open forest or cleared areas (Girardi 1978, p. 245).

Ostodes species were collected only in areas with heavy tree cover (Solem pers. comm. in Girardi 1978, p. 245), but the relative importance of rainfall and soil type in maintaining moisture supply was not assessed in these areas (Girardi 1978, p. 245). Nevertheless, relatively closed canopy or heavy tree cover and their roles in maintaining moisture supply appears to be an important habitat factor for *O. strigatus.*

Although the biology of the genus *Ostodes* is not well studied, and, therefore, the exact diet is unknown, it is highly probable that *O. strigatus* feeds at least in part on decaying leaf litter and fungus (Girardi 1978, p. 242; Miller 2014, pers. comm.). The approximate age at which these snails reach full sexual maturity is unknown (Girardi 1978, p. 194). Once they reach maturity and can successfully reproduce, it is likely adult snails deposit their eggs into leaf litter where they develop and hatch.

Ostodes strigatus is known only from the western portion of the island of Tutuila in American Samoa, including the center and southeast edge of the central plateau, and the extreme southern coast and mountain slope near Pago Pago, with an elevation range of 60 to 390 m (197 to 1,280 ft) (Girardi 1978, p. 224; B. P. Bishop Museum 2015, in litt.).

Until 1975, *O. strigatus* was considered widespread and common, but has since declined significantly (Miller 1993, p. 15; Cowie 2001, p. 215). In 1992, a survey of nine sites on Tutuila reported several live individuals (and abundant empty shells) from a single site on the western end of the island (Maloata Valley) and only shells (no live individuals) at three sites in the central part of the island (Miller 1993, pp. 23–27). At each of the four sites where live *O. strigatus* or empty shells were found, the predatory rosy wolf snail was common or abundant (Miller 1993, p. 23). In 1998, surveys within the newly established National Park of American Samoa (NPAS) on northern Tutuila did not detect any live *O. strigatus* or shells (Cowie and Cook 2001, pp. 143–159); however, Cowie and Cook (1999, p. 24) note that these areas were likely outside the range of *O. strigatus*. We are unaware of any surveys conducted for this species since 1998; however, local field biologists that frequent the forest above Maloata Valley for other biological field work report they have not seen *O. strigatus* (Miles 2015c, in litt.). Observations of live individuals at a single location on western Tutuila more than 20 years ago suggest that this species has undergone a significant reduction in its range and numbers (Miller 1993, pp. 15, 23–27; Cowie 2001, p. 215). Live individuals or shells of *O. strigatus* have not been reported since 1992, and no systematic surveys have been conducted for this species since the late 1990s (Cowie and Cook 1999, p. 24; Miles 2015c, in litt.).

Summary of Factors Affecting Ostodes strigatus

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The threats of nonnative plants, agriculture and development, and feral pigs negatively impact the habitat of *Ostodes strigatus* in a manner similar to that described for *Eua zebrina* (see Factor A discussion for *Eua zebrina* above). For the same reasons described in the Factor A discussion for *E. zebrina*, we consider the threats of destruction, modification, and curtailment of the species habitat and range to be significant ongoing threats to *Ostodes strigatus*. The decline of the native land snails in American Samoa has resulted, in part, from the loss of native habitat to agriculture and development, impacts to native forest structure from hurricanes, the establishment of nonnative plant species, and disturbance by feral pigs; these threats are ongoing and interact to exacerbate negative impacts and increase the vulnerability of extinction of *O. strigatus*.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

Several programs and partnerships to address the threat of habitat modification by nonnative plant species and feral pigs have been established and are ongoing within areas that provide habitat for *O. strigatus* (see Factor A discussion for the mao). In addition, approximately 2,533 ac (1,025 ha) of forested habitat within the Tutuila Unit of the NPSA are protected and managed under a 50-year lease agreement with the American Samoa Government and multiple villages within a portion of the range of *O. strigatus* (NPSA Lease Agreement 1993). Although some of the habitat for *O. strigatus* is protected by the NPSA lease agreement from large-scale land-clearing, the national park designation does not protect this species' habitat outside the park, or protect habitat inside or outside the park from degradation or destruction by feral pigs or invasive nonnative plants.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the proposed rule, we erroneously included "overutilization for scientific purposes" in our assessment of threats to *Ostodes strigatus*. We maintain that collection for scientific purposes likely contributed to a reduction in the number of *O. strigatus* in the wild; however, we recognize that at the time the majority of collections were made for scientific purposes, *O. strigatus* was neither at risk of extinction nor did the numbers collected increase the risk of its extinction. We have no evidence of this species having been collected for other purposes. In summary, based on the best available scientific and commercial information, we do not consider the overutilization for commercial, recreational, scientific, or educational purposes to be a current threat to *O. strigatus*. When this final listing becomes effective (see **DATES**, above), research and collection of this species will be regulated through permits issued under section 10(a)(1)(A) of the Act.

Factor C: Disease or Predation

Disease

We are not aware of any threats to *Ostodes strigatus* that would be attributable to disease.

Predation by Nonnative Snails

The nonnative rosy wolf snail is widespread on Tutuila and has been shown to contribute to the decline and extinction of native land snails (see Factor C discussion for *Eua zebrina*). Several live individuals and numerous shells of the rosy wolf snail were found in the same sites in which live individuals (one site) and numerous shells (three sites) of *O. strigatus* were found (Miller 1993, pp. 23–27). Due to its widespread presence on Tutuila, predation by the rosy wolf snail is considered a threat to *O. strigatus*.

Predation by several other nonnative carnivorous snails, *Gonaxis kibweziensis, Streptostele musaecola,* and *Gulella bicolor,* has been suggested as a potential threat to *O. strigatus* and other native land snails (see Factor C discussion for *Eua zebrina*). Despite the lack of current information on the abundance of *G. kibweziensis,* but because of its predatory nature and the documented decline and lack of recent sightings of *O. strigatus,* we consider the predation by *G. kibweziensis* to be a threat to *O. strigatus*. Because of their previously observed low abundance, comparatively small size, and lack of specific information regarding impacts to *O. strigatus,* we do not consider predation by *G. bicolor* or *S. musaecola* as threats to *O. strigatus* that will continue in the future. In summary, predation by the nonnative rosy wolf snail and *Gonaxis kibweziensis* is a current threat to *O. strigatus* and will continue into the future.

Predation by New Guinea or Snail-eating Flatworm

The nonnative New Guinea or snail-eating flatworm has been the cause of decline and extinction of native land snails (see Factor C discussion for *Eua zebrina*). This predatory flatworm is found on Tutuila. The ground-dwelling habit of *O. strigatus* and its occurrence in the leaf litter places *O. strigatus* at a greater risk of exposure to the threat of predation by this terrestrial predator. Therefore, predation by *P. manokwari* is considered a threat to *O. strigatus* that will continue in the future.

Predation by Rats

Rats are known to prey upon endemic land snails and can devastate populations (see Factor C discussion for *Eua zebrina*). Three rat species are present in American Samoa, and frequent evidence of predation by rats on the shells of native land snails was reported during surveys (Miller 1993, p. 16; Cowie and Cook 2001; p. 47). Based on the presence of rats on Tutuila and evidence that they prey on native snails, the threat of predation by rats is likely to continue and is a significant factor in the continued existence of *Ostodes strigatus* that will continue in the future.

Conservation Efforts to Reduce Disease or Predation

We are unaware of any conservation actions planned or implemented at this time to abate the threats of predation by rats, nonnative snails, or flatworms to *O. strigatus*.

Summary of Factor C

In summary, based on the best available scientific and commercial information, we consider predation by the rosy wolf snail, *Gonaxis kibweziensis,* the New Guinea flatworm, and rats to be a threat to *O. strigatus* that will continue in the future.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

No existing Federal laws, treaties, or regulations specify protection of the habitat of *O. strigatus* from the threat of deforestation, or address the threat of predation by nonnative species such as rats, the rosy wolf snail, and the New Guinea flatworm. Some existing Territorial laws and regulations have the potential to afford *O. strigatus* some protection, but their implementation does not achieve that result. The DMWR is given statutory authority to ''manage, protect, preserve, and perpetuate marine and wildlife resources'' and to promulgate rules and regulations to that end (ASCA, title 24, chapter 3). This agency conducts monitoring surveys, conservation activities, and community outreach and education about conservation concerns. However, to our knowledge, the DMWR has not used this authority to undertake conservation efforts for *O. strigatus* such as habitat protection and control of nonnative molluscs and rats (DMWR 2006, pp. 79–80).

The Territorial Endangered Species Act provides for appointment of a Commission with the authority to nominate species as either endangered or threatened (ASCA, title 24, chapter 7). Regulations adopted under the Coastal Management Act (ASCA § 24.0501 *et seq.*) also prohibit the taking of threatened or endangered species (ASAC § 26.0220.I.c). However, the ASG has not listed *O. strigatus* as threatened or endangered, so these regulatory mechanisms do not provide protection for this species.

Under ASCA, title 24, chapter 08 (Noxious Weeds), the Territorial DOA has the authority to ban, confiscate, and destroy species of plants harmful to the agricultural economy. Similarly, under ASCA, title 24, chapter 06 (Quarantine), the director of DOA has the authority to promulgate agriculture quarantine restrictions concerning animals. These laws may provide some protection against the introduction of new nonnative species that may have negative effects on the habitat of *O. strigatus* or become predators of the species, but these regulations do not require any measures to control invasive nonnative plants or animals that already are established and proving harmful to native species and their habitats (DMWR 2006, p. 80) (see Factor D for the Pacific sheath-tailed bat, above).

As described above, the Territorial Coastal Management Act establishes a land use permit (LUP) system for development projects and a Project Notification Review System (PNRS) for multi-agency review and approval of LUP applications (ASAC § 26.0206). The standards and criteria for review of LUP applications include requirements to protect Special Management Areas (SMA), Unique Areas, and ''critical habitats'' (ASCA § 24.0501 *et. seq.*). To date, all of the SMAs that have been designated (Pago Pago Harbor, Leone Pala, and Nuuuli Pala; ASAC § 26.0221) are in coastal and mangrove habitats on the south shore of Tutuila and do not provide habitat for *O. strigatus,* which is known only from the interior western portion of the island. The only Unique Area designated to date is the Ottoville Rainforest (American Samoa Coastal Management Program 2011, p. 52), also on Tutuila's south shore, which could possibly provide habitat for *O. strigatus,* but it is a relatively small island of native forest in the middle of the heavily developed Tafuna Plain (Trail 1993, p. 4), far from the areas where *O. strigatus* has been recorded.

These laws and regulations are designed to ensure that ''environmental concerns are given appropriate consideration'' and include provisions and requirements that could address to some degree threats to native forest habitat required by *O. strigatus,* even though individual species are not named (ASAC § 26.0202 *et seq.*). Because the implementation of these regulations has been minimal and review of permits is not rigorous, the permit system may not provide the habitat protection necessary to provide for the conservation of *O. strigatus* and instead result in loss of native habitat important to this and other species as a result of land-clearing for agriculture and development (DMWR 2006, p. 71). We conclude that the implementation of the Coastal Management Act and its PNRS does not address the threat of habitat destruction and degradation to *O. strigatus* (see Factor D for the Pacific sheath-tailed bat for further details).

Summary of Factor D

In summary, existing Territorial laws and regulatory mechanisms have the potential to offer some level of protection for *O. strigatus* and its habitat but are not currently implemented in a manner that would do so. The DMWR has not exercised its statutory authority to address threats to *O. strigatus* such as predation by nonnative predators; the species is not listed pursuant to the Territorial Endangered Species Act; and the Coastal Management Act and its implementing regulations have the potential to address the threat of habitat loss to deforestation more substantively, but this law is inadequately implemented. Based on the best available information, some existing regulatory mechanisms have the potential to offer some protection of *O. strigatus* and its habitat, but their implementation does not reduce or remove threats to the species such as habitat destruction or modification or predation by nonnative species. For these reasons, we conclude that existing regulatory mechanisms do not address the threats to *O. strigatus.*

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

Low Numbers of Individuals and Populations

Species with low numbers of individuals, restricted distributions, and small, isolated populations are often more susceptible to extinction as a result of reduced levels of genetic variation, inbreeding depression, reproduced reproductive vigor, random demographic fluctuations, and natural catastrophes such as hurricanes (see Factor E discussion for *Eua zebrina,* above). The problems associated with small occurrence size and vulnerability to random demographic fluctuations or natural catastrophes such as severe storms or hurricanes are further magnified by interactions with other threats, such as those discussed above (see Factor A, Factor B, and Factor C, above).

We consider *O. strigatus* to be vulnerable to extinction due to impacts associated with low numbers of individuals and low numbers of populations because this species has suffered a serious decline in numbers and has not been observed in recent years (Miller 1993, pp. 23–27). Threats to *O. strigatus* include: Habitat destruction and modification by hurricanes, agriculture and development, nonnative plant species and feral pigs; and predation by the rosy wolf snail, *Gonaxis kibweziensis,* and the New Guinea flatworm. The effects of these threats are compounded by the current low number of individuals and populations of *O. strigatus.*

Effects of Climate Change

We do not have specific information on the impacts of the effects of climate change to *O. strigatus,* and our evaluation of the impacts of climate change to this species is the same as that for *E. zebrina,* above (and see Factor E discussion for the Pacific sheath-tailed bat). Increased ambient temperature and precipitation and increased severity of hurricanes would likely exacerbate other threats to this species as well as provide additional stresses on its habitat. The probability of species extinction as a result of climate change impacts increases when its range is restricted, habitat decreases, and numbers of populations decline (IPCC 2007, p. 48). *Ostodes strigatus* is limited by its restricted range in one portion of Tutuila and small population size. Therefore, we expect this species to be particularly vulnerable to environmental impacts of climate change and subsequent impacts to its habitat. Although we cannot predict the timing, extent, or magnitude of specific impacts, we do expect the effects of climate change to exacerbate the current threats to these species, such as habitat loss and degradation.

Conservation Efforts to Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats of hurricanes, low numbers of individuals, and the effects of climate change that negatively impact *O. strigatus.*

Synergistic Effects

In our analysis of the five factors, we found that the snail *Ostodes strigatus* is likely to be affected by loss of forest habitat, predation by nonnative snails, flatworms, and rats, and the vulnerability of its small, isolated populations to chance demographic and environmental occurrences. We also identify climate change as another source of risk to the species because increased ambient temperature and storm severity resulting from climate change are likely to exacerbate other, direct threats to *O. strigatus* in American Samoa, and in particular place additional stress on its habitat; these effects of climate change are projected to increase in the future. Multiple stressors acting in combination have greater potential to affect *O. strigatus* than each factor alone. For example, projected warmer temperatures may enhance reproduction in nonnative predatory snails and flatworms or the spread of nonnative invasive plants. The combined effects of environmental, demographic, and catastrophic-event stressors, especially on small populations, can lead to a decline that is unrecoverable and results in extinction (Brook *et al.* 2008, pp. 457–458). The impacts of any one of the stressors described above might be sustained by a species with larger, more resilient populations, but in combination habitat loss, predation, small-population risks, and climate change have the potential to rapidly affect the size, growth rate, and genetic integrity of a species like *O. strigatus* that persists as small, disjunct populations. Thus, the synergy among factors may result in greater impacts to the species than any one stressor by itself.

Determination for *Ostodes strigatus*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Ostodes strigatus.* Observations of live individuals at a single location on western Tutuila more than 20 years ago suggest that this species has undergone a significant reduction in its range and numbers. The threat of habitat destruction and modification from agriculture and development, hurricanes, nonnative plant species, and feral pigs is occurring throughout the range of *O. strigatus* and is not likely to be reduced in the future. The impacts from these threats are cumulatively of high magnitude (Factor A). The threat of predation from nonnative snails, rats, and the nonnative predatory flatworm is of the highest magnitude, and likely to continue in the future (Factor C). Additionally, the low numbers of individuals and populations of *O. strigatus, i.e.,* the possible occurrence of this species restricted to a single locality where it was observed more than 20 years ago, is likely to continue (Factor E) and is compounded by the threats of habitat destruction and modification and predation. These factors pose threats to *O. strigatus* whether we consider their effects individually or cumulatively. Current Territorial wildlife laws and conservation efforts do not address the threats to the species (Factor D), and these threats will continue in the future.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that *Ostodes strigatus* is presently in danger of extinction throughout its entire range based on the severity and immediacy of the ongoing and projected threats described above. The loss and degradation of its habitat, predation by nonnative snails and flatworms, small number of individuals, limited distribution, the effects of small population size, and stochastic events such as hurricanes render this species in its entirety highly susceptible to extinction as a consequence of these imminent threats; for this reason, we find that a threatened species status is not appropriate for *O. strigatus.* Therefore, on the basis of the best available scientific and commercial information, we are listing *Ostodes strigatus* as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the snail *O. strigatus* is endangered throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37577, July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing creates public awareness and can stimulate conservation by Federal, Territorial, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and Territories and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed followed by preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State or Territorial agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Pacific Islands Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Territories, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on all lands.

When these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, U.S. Territory of American Samoa would be eligible for Federal funds to implement management actions that promote the protection or recovery of these species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) any such species within the United States or the territorial sea of the United States or upon the high seas; to import into or export from the United States any such species; to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species; or sell or offer for sale in interstate or foreign commerce any such species. In addition, prohibitions of section 9(a)(1) of the Act make it unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive: Activities that result in take of any of the five species in American Samoa by causing significant habitat modification or degradation such that it causes actual injury by significantly impairing essential behaviors. This may include, but is not limited to, introduction of nonnative species in American Samoa that prey upon the listed species or the release in the territory of biological control agents that attack any life-stage of these species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2015–0128 and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Pacific Islands Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245 unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

■ a. By adding an entry for ''Bat, Pacific sheath-tailed (South Pacific subspecies)'' (*Emballonura semicaudata semicaudata*) in alphabetical order under MAMMALS; and

■ b. By adding entries for ''Ground-dove, friendly (American Samoa DPS)'' (*Gallicolumba stairi*) and ''Mao (honeyeater)'' (*Gymnomyza samoensis*) in alphabetical order under BIRDS; and

■ c. By adding entries for *''Eua zebrina''* and *''Ostodes strigatus''* in alphabetical order under SNAILS.

The additions read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
		Mammals		
* *	*	* *	*	* *
Bat, Pacific sheath-tailed (South Pacific subspecies) (= peapea vai, American Samoa; = tagiti, Samoa; = beka beka, Fiji).	*Emballonura semicaudata semicaudata.*	Wherever found	E	81 FR [*Insert* Federal Register *page where the document begins*]; September 22, 2016.
* *	*	* *	*	* *
		Birds		
* *	*	* *	*	* *
Ground-dove, friendly (= tuaimeo) (American Samoa DPS).	*Gallicolumba stairi*	U.S.A. (AS)	E	81 FR [*Insert* Federal Register *page where the document begins*]; September 22, 2016.
* *	*	* *	*	* *
Mao (= maomao) (honeyeater)	*Gymnomyza samoensis* ..	Wherever found	E	81 FR [*Insert* Federal Register *page where the document begins*]; September 22, 2016.
* *	*	* *	*	* *
		Snails		
* *	*	* *	*	* *
Snail [no common name]	*Eua zebrina*	Wherever found	E	81 FR [*Insert* Federal Register *page where the document begins*]; September 22, 2016.
Snail [no common name]	*Ostodes strigatus*	Wherever found	E	81 FR [*Insert* Federal Register *page where the document begins*]; September 22, 2016.
* *	*	* *	*	* *

Dated: September 1, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–22276 Filed 9–21–16; 8:45 am]

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Part III

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1493
Facility Guarantee Program; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

RIN 0551–AA73

Facility Guarantee Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This final rule amends the regulations used to administer the Facility Guarantee Program (FGP). Under the FGP, the Commodity Credit Corporation (CCC) may issue payment guarantees in connection with sales of goods or U.S. services to establish or improve agricultural-related facilities in emerging markets to expand exports of U.S. agricultural commodities or products. This final rule incorporates statutory changes from the Food, Conservation, and Energy Act of 2008 and modifications intended to reduce the burden on participants and improve program efficiency and effectiveness. Certain revisions will ensure the FGP is operated in compliance with the Organisation for Economic Co-operation and Development (OECD) Arrangement on Officially Supported Export Credits. Additionally, this final rule incorporates significant changes previously made to the regulations for the Export Credit Guarantee Program (GSM–102) that are also applicable to the FGP.

DATES: This rule is effective September 22, 2016. In order to solicit views based on program experience, the Foreign Agricultural Service (FAS) is providing the public with an additional 180-day comment period. FAS will consider comments received and may issue a revised final rule based on the comments. To facilitate additional comment, FAS has included a list of questions for participants to consider and respond to (see "Questions for Consideration" section below). Comments concerning this final rule must be received by March 21, 2017 to be assured consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions to submit comments.
- *Email: GSMregs@fas.usda.gov.*
- *Fax:* (202) 720–2495, Attention: "FGP Final Rule Comments".
- *Hand Delivery, Courier, or U.S. Postal delivery:* Amy Slusher, Deputy Director, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 1025, Room 5509, Washington, DC 20250–1025.

Comments may be inspected at 1400 Independence Avenue SW., Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this final rule is available through the Foreign Agricultural Service (FAS) homepage at: *http://www.fas.usda.gov/topics/export-financing.*

FOR FURTHER INFORMATION CONTACT: Amy Slusher, Deputy Director, Credit Programs Division, by phone at (202) 720–6211, or by email at: *Amy.Slusher@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Commodity Credit Corporation's (CCC) Facility Guarantee Program (FGP) is administered by the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) on behalf of CCC, pursuant to program regulations codified at 7 CFR part 1493; through the issuance of program announcements and notices to participants that are consistent with this regulation; and in compliance with the requirements of the Organisation for Economic Co-operation and Development (OECD) Arrangement on Officially Supported Export Credits, where applicable. Under the FGP, CCC provides payment guarantees to facilitate the financing of manufactured goods and U.S. services to improve or establish agriculture-related facilities in emerging markets. By supporting such facilities, the FGP is designed to enhance sales of U.S. agricultural commodities and products to emerging markets where the demand for such commodities and products may be limited due to inadequate storage, processing, handling, or distribution capabilities.

Regulatory History

The previous FGP rule became effective on August 8, 1997. The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (2008 Act) modified the program by including a "construction waiver" that allows the Secretary of Agriculture to waive requirements related to the use of U.S. goods in the construction of a proposed facility if the Secretary determines that "(A) goods from the United States are not available; or (B) the use of goods from the United States is not practicable."

On August 6, 2009, FAS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (74 FR 39240). This document was intended to solicit comments on improvements to be made in the implementation and operation of the FGP program, with the intent of improving the FGP's effectiveness and efficiency and lowering costs. FAS received comments to the ANPR from five entities. One of the key comments was that program requirements, particularly the application process, were too burdensome on participants and effectively precluded use of the program. Further, program fees were consistent with those charged by the U.S. Export-Import Bank for similar products but coverage was inferior.

FAS issued a proposed rule soliciting public comment on June 15, 2015 (80 FR 34080). The comments received, as well as FAS's responses, are described below. No changes were made to the rule in response to these comments.

Summary of Comments Received on Proposed Rule

Comment: An executive summary describing the program as a "product" and listing its uses would generate more interest.

Response: FAS included a summary of key program aspects in the preamble to this final rule.

Comment: I assume agricultural equipment exports would be eligible for coverage. If so, USDA should highlight this fact.

Response: In accordance with Section 1542(b)(1) of the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act), as amended by the 2008 Act (7 U.S.C. 5622 note), the Secretary of Agriculture must determine that the FGP payment guarantee will "primarily promote the export of United States agricultural commodities. . . ." This requirement is also found in this regulation at § 1493.290(g)(4). CCC will only consider covering exports of agricultural equipment if the transaction would primarily benefit exports of U.S. agricultural commodities.

Comment: CCC should be given the flexibility to waive domestic content rules if the project is otherwise qualified.

Response: Pursuant to section 1542(b)(3) of the FACT Act, as amended (7 U.S.C. 5622 note), in certain circumstances "The Secretary may waive any applicable requirements relating to the use of United States goods in the construction of a proposed facility . . . ." This rule sets forth the requirements for requesting such a waiver in § 1493.290(f).

Comment: The required 15 percent down payment should include the land value and other sufficient security.

Response: Prior to CCC's issuance of a payment guarantee, the buyer is required to make a 15 percent initial payment (down payment) to the seller. The initial payment, at minimum, must equal 15 percent of the net contract value. The initial payment must be a cash payment from the buyer to the seller; it may not simply constitute the value of a portion of the project or a revocable security or pledge. The payment may be financed separately (outside of the FGP payment guarantee). CCC will provide guidance to sellers as needed regarding the initial payment.

Comment: There are several projects in Africa that are excellent candidates for this type of program, as the United States is a high-quality, least-cost producer.

Comment: I support this program because it will assist U.S. dairy exporters in exporting our products.

Comment: As a U.S. exporter of hardwood logs, lumber, and veneer, a line of credit, insurance or grant to open a warehouse in an importing country and fill it with our goods could potentially help grow our sales into that country.

Comment: I support the continued use of the Federal Guarantee Program as it helps U.S. producers in their efforts to develop export business.

Response: CCC will consider all transactions that meet program requirements, including that the proposed transaction will benefit the export of U.S. agricultural commodities and is destined for an eligible emerging market. FAS will make available on the USDA Web site a list of eligible emerging markets under the FGP.

Questions for Consideration

CCC is providing program participants the opportunity to comment on this final rule. In particular, participants are encouraged to utilize the FGP and, based on that experience, provide input to CCC on potential program improvements and additional modifications to the rule. The questions below are designed to facilitate feedback; however, participants may comment on any aspect of the regulation or program operations.

Question 1: Does the requirement for a letter of credit hinder the FGP program's effectiveness? If so, what other types of financing mechanism(s) would be appropriate for this program?

Question 2: Have you submitted a transaction to CCC for FGP coverage (or do you intend to submit a transaction) in which you faced difficulties in obtaining alternative financing? If so, in what ways is the FGP program different—and potentially more useful—for your particular transaction?

Question 3: Describe any risks you have faced—either under an FGP-supported transaction or other past transactions—that prevented completion of the project. How can CCC assist with reducing or eliminating these risks?

Question 4: If you have used or are familiar with other types of facility loan, guarantee or insurance programs, such as programs offered by the U.S. Export-Import Bank, the International Finance Corporation of the World Bank Group, or others, what are the benefits of using the FGP program over these other programs?

Question 5: How do the FGP program terms (tenor, fees, coverage level, etc.) compare to other official government support programs you have used (including both U.S. and non-U.S. programs)?

Question 6: Are the tenor (repayment term) restrictions dictated by the OECD Arrangement indicative of the needs in the market for project financing?

Question 7: Would the FGP program be attractive if CCC offered coverage of less than 100 percent (or 85 percent after deduction of the initial payment)?

Question 8: Is the required minimum initial payment of 15% an appropriate amount to demonstrate genuine interest in moving forward with an FGP program transaction—or a deterrent to participating?

Question 9: Will the 50 percent U.S. content requirement hinder your participation in the FGP—even though you can request and receive a waiver of the requirement from CCC?

Question 10: Are the potential participants in the FGP (sellers, U.S. financial institutions, and foreign financial institutions) the same as under CCC's GSM–102 program? If not, what avenues should CCC use to introduce the FGP to a broader or different set of potential program users?

Question 11: Describe any difficulties you had in obtaining interest for an FGP transaction from one of CCC's approved U.S. or foreign financial institutions.

Question 12: Has the FGP assisted you in finding new overseas buyers, or enhanced your sales with existing buyers? If yes, please explain.

Question 13: How could CCC improve the letter of interest stage of the application process? Is there additional information CCC should collect from the seller during this stage? If you submitted a letter of interest for a transaction, was the feedback you received from CCC beneficial?

Question 14: What suggestions do you have to streamline and simplify the payment guarantee application process?

Question 15: In making the determination of whether a transaction will likely primarily benefit U.S. agricultural commodity exports, CCC relies on its own internal analysis and consultation with relevant external stakeholders. Should CCC request more information from the seller in making this determination?

Question 16: Has your firm been required in the past to conduct an environmental and social risk assessment or impact analysis related to a project? If so, how did those requirements compare to the guidelines and requirements of the OECD and FGP Program?

Question 17: Please describe any difficulties you faced in adhering to the FGP's environmental and social impact requirements—for example, in providing required information for the screening document; providing the environmental and social impact assessment; or monitoring and reporting. What modifications could CCC make to the program to alleviate these difficulties?

Question 18: What suggestions do you have regarding how CCC could improve FGP program guidance—in ways that would make the program easier to understand and/or would attract additional participants?

Changes to the Final Rule

CCC made a number of changes in the final rule (from the proposed rule), particularly related to environmental and social screening and review of projects. Primarily, the final rule includes a more detailed explanation of the requirements for submitting information on potential environmental and social impacts of a transaction, the timing for submitting this information, and related reporting requirements. Key aspects of the program and associated requirements in the final rule are discussed below. In some instances, the numbering system of this final rule differs from that in the proposed rule. For purposes of this discussion, the numbering of the final rule is used.

General Program Structure and Operation

Following the effective date of this final rule, FAS will announce on the USDA Web site program allocations for FGP payment guarantees; a list of eligible emerging markets; approved U.S. and foreign financial institutions; and other relevant program information, including (but not limited to) maximum guarantee coverage, maximum repayment terms, and guarantee fees. Initially, FAS may announce a limited allocation of payment guarantees to a limited number of emerging markets, and expand allocations and markets after assessing the effectiveness of the program in light of program use and comments from participants.

Similar to the GSM–102 Export Credit Guarantee Program, the payment mechanism underlying the FGP transaction is a letter of credit issued by a CCC-approved foreign financial institution. The payment guarantee is an agreement by CCC to pay the seller, or the U.S. financial institution that may take assignment of the payment guarantee, specified amounts of principal and interest in case of default by the foreign financial institution that issued the letter of credit in favor of the seller for the sale covered by the payment guarantee.

Credit Terms and Risk Coverage

The United States is a participant in the OECD Arrangement on Officially Supported Export Credits ("the Arrangement"). The Arrangement seeks to foster a level playing field for official export credits and applies "to all official support provided by or on behalf of a government for export of goods and/or services, including financial leases, which have a repayment term of two years or more." The Arrangement is updated periodically by OECD Participants. The most recent version can be found at *http://www.oecd.org/tad/xcred/arrangement.htm*.

Repayment Terms (Tenor)

The Arrangement prescribes maximum tenor (repayment terms) based on the destination country of the transaction: OECD Category I (high-income) countries are eligible for a maximum tenor of five years (with the possibility of 8.5 years in certain circumstances); Category II countries (all others) are eligible for a maximum tenor of 10 years. Because the FGP covers transactions in emerging markets, most program destination countries will fall into OECD Category II; however, CCC may prescribe shorter tenors for certain countries and obligors based on risk considerations.

Initial Payment

The Arrangement requires a minimum down payment be made by the buyer to the seller prior to the start of the credit. The minimum amount of the required initial payment (as a percentage of the net contract value) will be specified on the USDA Web site. The current requirement under the Arrangement is 15 percent. The initial payment must be made, and documentation of such initial payment provided to CCC, before CCC will approve the seller's final application for a payment guarantee.

Coverage Level

The Arrangement limits coverage to a maximum of 85 percent of the net contract value; therefore, CCC may offer coverage of up to 100 percent of the balance of the transaction after the initial payment is deducted. This equates to 100 percent coverage of the sum of the net contract value and approved local costs, less the initial payment and any discounts and allowances. CCC may elect to offer a lower percentage of coverage. Maximum coverage will be specified on the USDA Web site.

Guarantee Fees

The Arrangement prescribes minimum fees to be charged based on country risk, obligor risk, tenor, percentage of cover, and other factors. FGP guarantee fees will be available on the USDA Web site, will be consistent with the rules of the Arrangement, and will also reflect CCC's assessment of repayment risk. CCC will not issue a payment guarantee until the seller remits the full guarantee fee.

Participant Eligibility

U.S. Sellers

All sellers must provide the information and meet the qualification requirements in § 1493.220 before CCC will consider any FGP transactions. To reduce the burden on program participants, CCC eliminated FGP qualification requirements for sellers already qualified to participate in the GSM–102 Program. In accordance with § 1493.220(c), sellers who are qualified exporters under the GSM–102 program are only required to submit additional information specific to the FGP.

U.S. and Foreign Financial Institutions

All U.S. and foreign financial institutions must provide the information and meet the qualification requirements of §§ 1493.230 and 1493.240, respectively, before participating in FGP transactions. U.S. financial institutions qualified under the GSM–102 program are automatically qualified to participate in the FGP. Due to the longer tenors and corresponding higher risk under the FGP, CCC will determine on a case-by-case basis whether foreign financial institutions already qualified under the GSM–102 Program are eligible for the FGP. There is no separate FGP qualification process for foreign financial institutions. CCC will advise interested foreign financial institutions of their dollar participation limit under the GSM–102 and FGP Programs.

Transaction Eligibility

Expanding U.S. Agricultural Commodity Exports

The FACT Act, as amended, allows for the provision of export credit guarantees for "(A) the establishment or improvement of facilities, or (B) the provision of services or United States products goods [sic], in emerging markets by United States persons to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities and products thereof *if the Secretary of Agriculture determines that such guarantees will primarily promote the export of United States agricultural commodities* . . ." (emphasis added). To meet this requirement, the seller must provide in the initial application for a payment guarantee (§ 1493.260(b)(7)) a list of agricultural commodities or products to be handled, marketed, stored or distributed following completion of the proposed transaction and a description of how the transaction will specifically benefit exporters of U.S. agricultural commodities.

Rather than require the seller to provide an in-depth analysis and projection of future U.S. agricultural commodity exports, CCC will now conduct this analysis. CCC will seek input from other parts of USDA, commodity organizations, state and regional trade groups, commodity exporters, and other relevant governmental and private sector organizations to assist in collecting data, conducting this analysis, and determining a transaction's impact. CCC will not approve an application for a payment guarantee if CCC determines that the transaction is unlikely to primarily benefit U.S. agricultural commodity exports.

Environmental and Social Impacts

The OECD "Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence" provides guidelines for addressing environmental and social impacts related to exports of capital goods and/or services. These guidelines assist OECD members in preventing and mitigating adverse environmental and social impacts of projects receiving official support.

Consistent with the OECD guidelines, CCC will screen all FGP payment guarantee applications for any negative environmental and social impact. In accordance with § 1493.260(b), sellers must submit a completed preliminary environmental and social screening document with each initial application for a payment guarantee (unless the screening document was previously submitted with a letter of interest and is unchanged). The screening document, which contains basic questions about the nature of the transaction/project and its location and proximity to environmentally or socially sensitive areas, is available on the USDA Web site. CCC will review the screening document to determine whether the transaction is likely to have significant adverse environmental and/or social impacts.

If CCC determines that a transaction will have potential adverse impacts, the seller must submit an environmental and social impact assessment (ESIA), an in-depth report that identifies these risks and proposes measures to offset them. Sellers are encouraged to consider potentially adverse impacts early on in the project, as an ESIA can take several months to complete. The cost of the ESIA can be financed under the payment guarantee if the ESIA meets the definition of a "U.S. Service." If an ESIA is required, the seller must submit it with the final application for a payment guarantee. CCC will publish certain non-business confidential details of any transactions requiring an ESIA and provide the public with opportunity to comment. Additionally, certain transactions, including all transactions requiring an ESIA, will be subject to regular reporting throughout the life of the payment guarantee in accordance with § 1493.260(f).

CCC may reject an application for a payment guarantee if the transaction entails significant adverse environmental and/or social impacts that cannot be satisfactorily mitigated.

CCC Coverage and Guidelines for U.S. Content

Sellers may request coverage of any of the following under the FGP:

1. *U.S. goods.* U.S. goods are defined in § 1493.210. U.S. goods may include imported components that are assembled, processed or manufactured into the goods. Imported raw materials and basic manufactured items (for example, steel, iron, nuts and bolts) that are processed, assembled or manufactured into U.S. goods are automatically included in CCC's coverage and are not counted as imported components. CCC will rely on commercial practice and communication with participants to resolve issues that arise regarding imported raw materials and basic manufactured items.
2. *U.S. services.* Services are defined in § 1493.210. Non-U.S. services are not eligible for coverage.
3. *Non-U.S. goods.* Non-U.S. goods may be eligible for CCC coverage. The seller may request (in the initial application for a payment guarantee) a coverage waiver to allow for coverage for non-U.S. goods. CCC will only consider a coverage waiver to allow non-U.S. goods based on one of the justifications found at § 1493.290(f)(2).
4. *Local costs.* Local costs are defined in § 1493.210 as "expenditures for goods in the destination country that are necessary for executing the firm sales contract and that are within scope of the firm sales contract." The OECD Arrangement prescribes a limit (currently 30 percent) on the maximum amount of official support for local costs. CCC will consider providing coverage for local costs within the limits of the Arrangement, but because local costs are non-U.S. goods, the seller must request and receive from CCC a coverage waiver for these costs.

The net contract value of the transaction is the basis for calculating the maximum amount of coverage (guaranteed value) that CCC will approve. The net contract value consists of the value of U.S. goods, cost of U.S. services, and value of non-U.S. goods (excluding local costs) that CCC has agreed to cover. Adding to the net contract value the value of approved local costs, then deducting the amount of the initial payment and any discount and allowances, and multiplying the result by the guaranteed percentage (100 percent, for example), generates the guaranteed value. The "Sample Transaction" below illustrates how to calculate net contract value, guaranteed value, and other required information.

U.S. Content Test and Coverage Waiver

CCC will apply a U.S. content test to all transactions to determine the level of U.S. versus non-U.S. content. Specifically, CCC will calculate the sum of the value of imported components and value of eligible non-U.S. goods (including approved local costs) as a percentage of the total value of goods and cost of services CCC agrees to cover (*i.e.,* the net contract value plus approved local costs). If the non-U.S. content accounts for less than 50 percent of the sum of the net contract value and approved local costs, or the seller is requesting coverage on only the U.S. content portion of the transaction, the transaction "passes" the U.S. content test. The "Sample Transaction" below illustrates the calculation of U.S. content.

If non-U.S. content accounts for 50 percent or more of the sum of the net contract value and approved local costs, the seller may request a coverage waiver. When requesting a coverage waiver, the seller must use one of the justifications found in § 1493.290(f)(2).

In making a determination regarding whether to grant a coverage waiver for non-U.S. goods or the U.S. content test, CCC will seek to validate the information that the seller provided to justify the inclusion of non-U.S. goods and/or imported components in U.S. goods. CCC will reach out to relevant companies, industry groups and government agencies to research the necessity of granting the waiver. Additionally, CCC will consider whether or not the non-U.S. goods and/or imported components in U.S. goods are essential to the completion of the FGP transaction. By allowing the seller multiple bases upon which it may request a coverage waiver, CCC intends to provide maximum flexibility in approving goods, services and projects that will meet the requirement to primarily benefit the export of U.S. agricultural commodities.

Application Process

There is one optional step (letter of interest) and two required steps (initial and final applications) in the FGP payment guarantee application process.

Letter of Interest

In accordance with § 1493.260(a), the seller may opt to submit a letter of interest to CCC describing a proposed transaction. The USDA Web site describes the information needed in the letter of interest. CCC will review the letter of interest and provide preliminary feedback on whether the proposed transaction may be eligible for FGP coverage. In doing so, CCC hopes to reduce the burden on participants by ruling out ineligible projects prior to the more in-depth application process. The letter of interest must be accompanied by a non-refundable fee (specified on the USDA Web site) that will be deducted from the final guarantee fee if the letter of interest ultimately results in issuance of a payment guarantee. If the seller opts to submit a letter of interest, it must be accompanied by a preliminary environmental and social screening document.

Initial Application

CCC divided the payment guarantee application process into two steps, as the seller will be unable to provide all required information without receiving certain feedback from CCC. The first step is the submission of an initial application. The initial application must include the details of the proposed export, project or facility as specified in § 1493.260(b), including a description of all goods and services for which coverage is sought. If not previously submitted with a letter of interest, or if the information has changed, the seller must submit a preliminary environmental and social screening document with the initial application. The seller must submit a non-refundable initial application fee, which will be deducted from the final guarantee fee if CCC issues a payment guarantee for the transaction.

CCC will review the initial application to determine if the proposal meets program requirements and whether to approve any coverage waiver requests. At this time, CCC will also determine if the transaction entails potential negative environmental and/or social impacts, and, if so, will require the seller to submit an environmental and social impact assessment. If CCC approves the initial application, the seller must submit a final application for payment guarantee.

Final Application

The seller will have at least 30 calendar days to submit the final application (§ 1493.260(d)). This timeframe will be based in part on whether the seller must provide an ESIA with the final application; if so, CCC will allow a longer timeframe. The seller must submit the full guarantee fee (less any letter of interest and initial application fees) with the final application. Upon CCC's review and approval of the final application, review and approval of the ESIA (if required), and receipt of the full guarantee fee, CCC will issue a payment guarantee in favor of the seller.

Performance Under the Payment Guarantee

The seller may choose to assign the payment guarantee to an approved U.S. financial institution in accordance with § 1493.310 and be paid as performance occurs. A list of approved U.S. financial institutions is available on the USDA Web site.

The seller is required to submit to CCC an evidence of performance report meeting the requirements of § 1493.320 for all contractual events occurring under the payment guarantee. The seller must submit the evidence of performance within 30 calendar days of each date of performance unless CCC grants an extension to this timeframe.

If the foreign financial institution fails to make payment under the letter of credit, the holder of the payment guarantee (either the seller or the U.S. financial institution) must submit a notice of default to CCC no later than 5 business days after the date the payment was due from the foreign financial institution. A claim for default must be submitted to CCC no later than 180 calendar days from the date of the defaulted payment.

Sample Transaction

Assume a seller submits an initial application for a payment guarantee. The total value of the firm sales contract with the buyer is $2,200,000. The elements of the firm sales contract are as follows:

(a) U.S. goods = $1,500,000 (of which, $300,000 constitutes imported components used in the manufacture of the U.S. goods)
(b) Non-U.S. goods = $600,000 (of which, $100,000 constitutes local costs, which may be approved by CCC)
(c) U.S. services = $100,000

The seller requests CCC coverage based on the full $2.2 million firm sales contract value, and requests a coverage waiver for the $600,000 in non-U.S. goods, which is granted. There are no discounts and allowances reported. The net contract value of the transaction is $2,100,000 (the total of all costs except local costs).

CCC applies the U.S. content test to determine the percentage of U.S. content:

(d) Eligible non-U.S. goods = $600,000
(e) Imported components = $300,000
(f) Sum of (d) and (e) = $900,000
(g) Net contract value + approved local costs = $2,200,000
(h) Total non-U.S. content = $900,000/ $2,200,000 = 41 percent

Because total non-U.S. content is only 41 percent of the total transaction, the transaction passes the U.S. content test. If the total non-U.S. content had been 50 percent or more, the seller would need to request a coverage waiver from CCC on the U.S. content test.

CCC's coverage is calculated as follows. Note that local costs in this example are approximately 5 percent of the net contract value (less than the maximum allowable 30 percent) and are approved by CCC.

(i) Net contract value = $2,100,000
(j) Approved local costs = $100,000
(k) Amount of initial payment = $315,000 (15 percent of the net contract value)
(l) Guaranteed value = (net contract value + approved local costs − initial payment) (100 percent coverage), or

Guaranteed value = ($2,100,000 + $100,000 − $315,000) × 1.0 = $1,885,000

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and was not reviewed by OMB. A cost-benefit assessment of this rule was not completed.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This final rule would not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this final rule. Before any judicial action may be brought concerning the provisions of this final rule, the appeal provisions of 7 CFR part 1493.200 would need to be exhausted. This rulemaking would not be retroactive.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

This final rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The United States has a unique relationship with Indian Tribes as provided in the Constitution of the United States, treaties, and Federal statutes. On November 5, 2009, President Obama signed a Memorandum emphasizing his commitment to "regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175." This rule has been reviewed for compliance with E.O. 13175. The policies contained in this rule do not have tribal implications that preempt tribal law.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Assessment

CCC has determined that this final rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), 40 CFR 1502.4, "Major Federal Actions Requiring the Preparation of Environmental Impact Statements" and the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

Unfunded Mandates

This final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The information collection and record keeping requirements contained in this regulation have been submitted to OMB for approval in accordance with the Paperwork Reduction Act of 1995 under OMB Control Number 0551–0032.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at: *http://www.fas.usda.gov.*

List of Subjects in 7 CFR Part 1493

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC amends 7 CFR part 1493 as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

■ 1. The authority citation for 7 CFR part 1493 continues to read as follows:

Authority: 7 U.S.C. 5602, 5622, 5622 note, 5661–5664, 5676; 15 U.S.C. 714b(d), 714c(f).

■ 2. Subpart C is revised to read as follows:

Subpart C—CCC Facility Guarantee Program (FGP) Operations

Sec.

1493.200 General statement.
1493.210 Definition of terms.
1493.220 Information required for seller participation.
1493.230 Information required for U.S. financial institution participation.
1493.240 Information required for foreign financial institution participation.
1493.250 Certification requirements for program participation.
1493.260 Application for payment guarantee.
1493.270 Certifications required for obtaining payment guarantee.
1493.280 Special requirements of the foreign financial institution letter of credit and terms and conditions document, if applicable.
1493.290 Terms and requirements of the payment guarantee.
1493.300 Fees.
1493.310 Assignment of the payment guarantee.
1493.320 Evidence of performance.
1493.330 Certification requirements for the evidence of performance.
1493.340 Proof of entry.
1493.350 Notice of default.
1493.360 Claims for default.
1493.370 Payment for default.
1493.380 Recovery of defaulted payments.
1493.385 Additional obligations and requirements.
1493.390 Dispute resolution and appeals.
1493.395 Miscellaneous provisions.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

§ 1493.200 General statement.

(a) *Overview.* The FGP of the Commodity Credit Corporation (CCC) was developed to expand U.S. agricultural commodity exports by making available payment guarantees to encourage U.S. private sector financing to establish or improve facilities or provide services or goods in emerging markets to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities and products. Such guarantees will primarily promote the export of U.S. agricultural commodities. CCC will give priority to transactions that encourage privatization of the agricultural sector or that benefit private farms and cooperatives in emerging markets, and for which nongovernmental persons agree to assume a relatively larger share of costs. The payment guarantee issued under FGP is an agreement by CCC to pay the seller, or the U.S. financial institution that may take assignment of the payment guarantee, specified amounts of principal and interest in case of default by the foreign financial institution that issued the letter of credit for the sale covered by the payment guarantee. The program is targeted toward those countries that have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S. agricultural exporters and producers and assist long-term market development for U.S. agricultural commodities.

(b) *Program administration.* The FGP is administered under the direction of the General Sales Manager and Vice President, CCC, pursuant to this subpart, subpart A of this part, any program announcements issued by CCC, and, as applicable, the Organisation for Economic Co-operation and Development's (OECD) Arrangement on Officially Supported Export Credits. From time to time, CCC may issue a notice to participants on the USDA Web site to remind participants of the requirements of the FGP or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A of this part. Program information, including available program amounts, eligible countries, and approved U.S. and foreign financial institutions, is available on the USDA Web site.

§ 1493.210 Definition of terms.

Terms set forth in this part, on the USDA Web site (including in program announcements and notices to participants), and in any CCC-originated documents pertaining to the FGP will have the following meanings:

Affiliate. Entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Control may include, but is not limited to: Interlocking management or ownership; identity of interests among family members; shared facilities and equipment; or common use of employees.

Assignee. A U.S. financial institution that has obtained the legal right to make a claim and receive the payment of proceeds under the payment guarantee.

Business day. A day during which employees of the U.S. Department of Agriculture in the Washington, DC metropolitan area are on official duty during normal business hours.

Buyer. A foreign purchaser that enters into a firm sales contract with a seller for the sale of goods to be shipped to the destination country and/or U.S. services to be provided in the destination country.

Buyer's representative. An entity having a physical office that is either organized under the laws of or registered to do business in the destination country specified in the payment guarantee and that is authorized to act on the buyer's behalf with respect to the sale described in the firm sales contract.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*).

CCC late interest. Interest payable by CCC pursuant to § 1493.370(c).

Contractual event. A specific deliverable (activity or milestone) measured by objective or quantifiable methods within the firm sales contract which, when met by the seller, results in an obligation to make payment in accordance with the agreed contractual terms without recourse, and triggers the start of coverage under the payment guarantee. Such events may include, but are not limited to, exports of goods, completion of services, or commissioning date of equipment or a facility.

Cost of services. The price for services as stipulated in the firm sales contract.

Coverage waiver. A determination by CCC, upon request of the seller, to allow guarantee coverage of non-U.S. goods and/or to waive the U.S. content test in § 1493.290(e).

Date of performance. The date that a contractual event occurs in accordance with the firm sales contract. The date of performance may be, but is not limited to, an installation date, the date of completion of the service, the commissioning date of equipment or a facility, or the date of export of goods (one of the following dates, depending upon the method of shipment: The on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country).

Date of sale. The earliest date on which a firm sales contract exists between the seller and the buyer.

Destination country. The emerging market (location) of the agricultural-related facility that will use the goods and/or services covered by the payment guarantee. If the payment guarantee covers goods not intended for a specific facility, then the country where the goods will be delivered and utilized.

Director. The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or designee.

Discounts and allowances. Any consideration provided directly or indirectly, by or on behalf of the seller, to the buyer in connection with a sale of a good or service, above and beyond its value. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the buyer requires the seller to employ and compensate a specified agent as a condition of concluding the sale; the whole or partial release of the buyer from any financial or contractual obligations; or settlements made in favor of the buyer for quality or weight.

Eligible export sale. A transaction in which the obligation of payment for the portion registered under the FGP arises solely and exclusively from a foreign financial institution letter of credit or terms and conditions document issued in connection with a payment guarantee.

Eligible imported components. Imported components in U.S. goods that are eligible for coverage because either:

(1) The transaction meets the U.S. content test in § 1493.290(e); or

(2) A coverage waiver of the U.S. content test has been requested by the seller and approved by CCC.

Eligible non-U.S. goods. Goods, including local costs, that are not U.S. goods but for which a coverage waiver has been requested by the seller and approved by CCC.

Eligible interest. The amount of interest that CCC agrees to pay the holder of the payment guarantee in the event that CCC pays a claim for default of ordinary interest. Eligible interest shall be the lesser of:

(1) The amount calculated using the interest rate agreed by the holder of the payment guarantee and the foreign financial institution; or

(2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the payment guarantee.

Emerging market. Any country that CCC determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) has the potential to provide a viable and significant market for U.S. agricultural commodities or products.

Environmental and Social Impact Assessment (ESIA). A report that identifies the environmental and social risks and impacts of a project/transaction and proposed measures to avoid, minimize, mitigate and/or offset adverse environmental and social impacts. The report must address the items set out in the most recent Organisation for Economic Co-operation and Development's "Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence."

Firm sales contract. The written sales contract entered into between the seller and the buyer which sets forth the terms and conditions of an eligible export sale from the seller to the buyer. Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The firm sales contract between the seller and the buyer may be conditioned upon CCC's approval of the seller's application for a payment guarantee. The written evidence of sale for the purposes of the FGP must, at a minimum, document the following information:

(1) Date of sale;

(2) A complete description of all goods associated with the transaction. For goods to be covered by the payment guarantee, include the brand name and model number, country where the good was manufactured and country from which the good will be exported (if applicable), quantity, value, and Incoterms (if applicable);

(3) A complete description of all services associated with the transaction. For services to be covered by the payment guarantee, include the supplier and cost;

(4) The date of performance of each contractual event; and

(5) Evidence of agreement between buyer and seller.

Foreign financial institution. A financial institution (including foreign branches of U.S. financial institutions):

(1) Organized and licensed under the laws of a jurisdiction outside the United States;

(2) Not domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction (except for multilateral and sovereign institutions).

Foreign financial institution letter of credit or letter of credit. An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices (UCP) for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), and if electronic documents are to be utilized, the current revision of the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP), providing for payment in U.S. dollars against stipulated documents and issued in favor of the seller by a CCC-approved foreign financial institution.

GSM. The General Sales Manager, Foreign Agricultural Service (FAS), USDA, acting in his or her capacity as Vice President, CCC, or designee.

Guaranteed value. The maximum amount indicated on the face of the payment guarantee, exclusive of interest, that CCC agrees to pay the holder of the payment guarantee. The guaranteed value is calculated by deducting the initial payment and any discounts and allowances from the net contract value and adding to that result the value of local costs that CCC has approved for coverage. The resulting figure is then multiplied by the guaranteed percentage (up to the maximum percentage allowable for that country).

Holder of the payment guarantee. The seller or the assignee of the payment guarantee with the legal right to make a claim and receive the payment of proceeds from CCC under the payment guarantee in case of default by the foreign financial institution.

Incoterms. Trade terms developed by the International Chamber of Commerce in Incoterms 2010 (or latest revision), which define the respective obligations of the buyer and the seller in a sales contract.

Initial payment. The minimum amount that the buyer is required to pay the seller prior to CCC's approval of the payment guarantee, expressed as a percentage (specified on the USDA Web site) of the net contract value.

Letter of interest. Information that the seller may provide to CCC prior to applying for a payment guarantee to obtain feedback on the potential eligibility of a transaction. Information to be submitted in a letter of interest is set out on the USDA Web site.

Local costs. Expenditures for goods in the destination country that are included in the firm sales contract.

Net contract value. The aggregate value of goods and cost of services (exclusive of local costs) that are eligible for guarantee coverage and for which coverage is requested.

North American Industry Classification System (NAICS). Standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Ordinary interest. Interest (other than post default interest) charged on the principal amount identified in the foreign financial institution letter of credit or, if applicable, the terms and conditions document.

Payment guarantee. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the seller, subject to the terms set forth in the written guarantee, this subpart, and any applicable program announcements, agrees to pay the holder of the payment guarantee in the event of a default by a foreign financial institution on its repayment obligation under the foreign financial institution letter of credit issued in connection with a guaranteed sale or, if applicable, under the terms and conditions document.

Post default interest. Interest charged on amounts in default that begins to accrue upon default of payment, as specified in the foreign financial institution letter of credit or, if applicable, in the terms and conditions document.

Preliminary environmental and social screening document or Screening document. A document in which the seller provides basic information about a transaction to allow CCC to determine whether the transaction may entail potentially adverse environmental and/or social impacts. The screening document is available on the USDA Web site.

Principal. A principal of a corporation or other legal entity is an individual serving as an officer, director, owner, partner, or other individual with management or supervisory responsibilities for such corporation or legal entity.

Program announcement. An announcement issued by CCC on the USDA Web site that provides information on policies, procedures, specific country programs and other information relevant to the operation of the FGP.

Repayment obligation. A contractual commitment by the foreign financial institution issuing the letter of credit in connection with an eligible export sale to make payment(s) on principal amount(s), plus any ordinary interest and post default interest, in U.S. dollars, to a seller or U.S. financial institution on deferred payment terms consistent with those permitted under CCC's payment guarantee. The repayment obligation must be documented using one of the methods specified in § 1493.280.

Repurchase agreement. A written agreement under which the holder of the payment guarantee may from time to time enter into transactions in which the holder of the payment guarantee agrees to sell to another party foreign financial institution Letter(s) of Credit and, if applicable, terms and conditions document(s) secured by the payment guarantee, and repurchase the same foreign financial institution Letter(s) of Credit and terms and conditions documents secured by the payment guarantee, on demand or date certain at an agreed upon price.

SAM (System for Award Management). A Federal Government owned and operated free Web site that contains information on parties excluded from receiving Federal contracts or certain subcontracts and excluded from certain types of Federal financial and nonfinancial assistance and benefits.

Seller. A supplier of goods and/or services that is both qualified in accordance with the provisions of § 1493.220 and the applicant for the payment guarantee.

Service. Any business activity classified in any of the 13 NAICS services sectors (NAICS chapters 22 and 48–49 through 81). For the shipment of goods, freight and insurance costs to the port of entry that are included in the price of the goods (in accordance with the specified Incoterms) are not considered services under this subpart.

Terms and conditions document. A document specifically identified and referred to in the foreign financial institution letter of credit which may contain the repayment obligation and the special requirements specified in § 1493.280.

Total FGP transaction value. The aggregate value of goods and cost of services (including local costs) to be covered by the payment guarantee. It is the net contract value plus eligible local costs, less the initial payment and less any discounts and allowances.

United States or U.S. Each of the States of the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

U.S. agricultural commodity or U.S. agricultural commodities.

(1) (i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity—

(A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(B) That the Secretary determines to be a high value agricultural product.

(2) For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

U.S. content test. A determination of the total value of eligible non-U.S. goods and value of imported components as a percentage of the sum of the net contract value and the value of approved local costs as specified in § 1493.290(e).

USDA. United States Department of Agriculture.

U.S. financial institution. A financial institution (including branches of foreign financial institutions):

(1) Organized and licensed under the laws of a jurisdiction within the United States;

(2) Domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

U.S. goods. Goods that are assembled, processed or manufactured in, and exported from, the United States, including goods which contain imported raw materials or imported components. Minor or cosmetic procedures (*e.g.*, affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing.

U.S. person. One of the following:

(1) An individual who is a citizen or legal resident of the United States; or

(2) An entity constituted or organized in the United States, including any corporation, trust partnership, sole proprietorship, joint venture, or other association with business activities in the United States.

U.S. services. Services performed by U.S. persons, including those temporarily residing outside the United States. Costs for hotels, meals, transportation, and other similar services incurred in the destination country are not U.S. services.

Value of components (also value of U.S. components, value of imported components). The price derived for components in goods, determined by:

(1) The price stipulated in the firm sales contract or, if such price is not available;

(2) The declared customs value or, if the customs value is not available; then

(3) The fair market wholesale value in the United States.

Value of goods (also value of U.S. goods, value of non-U.S. goods, or value of Eligible non-U.S. goods). The price derived for goods, determined by:

(1) The price stipulated in the firm sales contract or, if such price is not available;

(2) The declared customs value or, if the customs value is not available; then

(3) The fair market wholesale value in the United States.

§ 1493.220 Information required for seller participation.

(a) *Qualification requirements.* Sellers must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, an applicant must submit the following information to CCC in the manner specified on the USDA Web site:

(1) For the applicant:

(i) The name and full U.S. address (including the full 9-digit zip code) of the applicant's office, along with an indication of whether the address is a business or private residence. A post office box is not an acceptable address. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the FGP sales contemplated by the applicant;

(ii) Dun and Bradstreet (DUNS) number;

(iii) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(iv) Telephone and fax numbers;

(v) Email address (if applicable);

(vi) Business Web site (if applicable);

(vii) Contact name;

(viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and

(ix) The form of business entity of the applicant, (*e.g.*, sole proprietorship, partnership, corporation, etc.) and the U.S. jurisdiction under which such entity is organized and authorized to conduct business. Such jurisdictions are a U.S. State, the District of Columbia, Puerto Rico, and the territories or possessions of the United States. Upon request by CCC, the applicant must provide written evidence that such entity has been organized in a U.S. State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

(2) For the applicant's headquarters office:

(i) The name and full address of the applicant's headquarters office (a post office box is not an acceptable address); and

(ii) Telephone and fax numbers.

(3) For the applicant's agent for the service of process:

(i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;

(ii) Telephone and fax numbers;

(iii) Email address (if applicable); and

(iv) Contact name.

(4) A description of the applicant's business. Applicants must provide the following information:

(i) Nature of the applicant's business (*i.e.*, producer, service provider, trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history selling the goods or services to be sold under the FGP, including number of years involved in selling, types of goods or services sold, and destination of sales for the preceding three years;

(iii) Whether or not the applicant is a "small or medium enterprise" (SME) as defined on the USDA Web site.

(5) A listing of any related companies (*e.g.*, affiliates, subsidiaries, or companies otherwise related through common ownership) currently qualified to participate in CCC export programs;

(6) A statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(7) A statement that: "All certifications set forth in 7 CFR 1493.250(a) are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.250(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any seller that is currently qualified under subpart B of this part, § 1493.30, need only provide the information requested in § 1493.220(a)(4). Once CCC receives that information, CCC will notify the seller that the seller is qualified under this section to submit applications for an FGP payment guarantee, and the other information provided by the seller pursuant to § 1493.30 will be deemed to also have been provided under this section. Any seller not submitting an application for a GSM–102 or FGP payment guarantee for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in § 1493.220(a) to CCC to participate in the FGP. If at any time the information required by paragraph (a) of this section changes, the seller must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in § 1493.220(a).

§ 1493.230 Information required for U.S. financial institution participation.

(a) *Qualification requirements.* U.S. financial institutions must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, a U.S. financial institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Dun and Bradstreet (DUNS) number;

(3) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(4) Year-end audited financial statements for the applicant's most recent fiscal year;

(5) Breakdown of the applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(6) Organizational structure (independent, or a subsidiary, affiliate, or branch of another financial institution);

(7) Documentation from the applicable United States Federal or State agency demonstrating that the applicant is either licensed or chartered to do business in the United States;

(8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and

(9) A statement that: "All certifications set forth in 7 CFR 1493.250 are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.250. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any U.S. financial institution that is qualified under subpart B, § 1493.40 is qualified under this section, and the information provided by the U.S. financial institution pursuant to § 1493.40 will be deemed to also have been provided under this section. Any U.S. financial institution participating in neither the GSM–102 nor FGP programs for two consecutive U.S. Government fiscal years must resubmit the information and certifications specified in paragraph (a) of this section to CCC to participate in the FGP. If at any time the information required by paragraph (a) of this section changes, the U.S. financial institution must promptly notify CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(d) *Ineligibility for program participation.* A U.S. financial institution may be ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in § 1493.230(a).

§ 1493.240 Information required for foreign financial institution participation.

(a) *Qualification requirements.* Foreign financial institutions must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, a foreign financial institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Year-end, audited financial statements in accordance with the accounting standards established by the applicant's regulators, in English, for the applicant's three most recent fiscal years. If the applicant is not subject to a banking or other financial regulatory authority, year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's three most recent fiscal years;

(3) Breakdown of applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(4) Organizational structure (independent, or a subsidiary, affiliate, or branch of another legal entity);

(5) Name of foreign government agency that regulates the applicant; and

(6) A statement that: "All certifications set forth in 7 CFR 1493.250 are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.250. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Participation limit.* If, after review of the information submitted and other publicly available information, CCC determines that the foreign financial institution is eligible for participation in the FGP, CCC will establish a dollar participation limit for the institution. This limit will be the maximum amount of exposure CCC agrees to undertake with respect to this foreign financial institution at any point in time. CCC may change or cancel this dollar participation limit at any time based on any information submitted or any publicly available information.

(d) *Previous qualification and submission of annual financial statements.* Each qualified foreign financial institution shall submit annually to CCC the certifications in § 1493.250 and its audited fiscal year-end financial statements in accordance with the accounting standards established by the applicant's regulators, in English, so that CCC may determine the continued ability of the foreign financial institution to adequately service CCC guaranteed debt. If the foreign financial institution is not subject to a banking or other financial regulatory authority, it must submit year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's most recent fiscal year. Failure to submit this information annually may cause CCC to decrease or cancel the foreign financial institution's dollar participation limit. Any foreign financial institution participating in neither the FGP nor the GSM–102 Program for two consecutive U.S. Government fiscal years may have its dollar participation limit cancelled. If this participation limit is cancelled, the foreign financial institution must resubmit the information and certifications requested in paragraph (a) of this section to CCC when reapplying for participation. Additionally, if at any time the information required by paragraph (a) of this section changes, the foreign financial institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(e) *Ineligibility for program participation.* A foreign financial institution:

(1) May be deemed ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in § 1493.240(a); and

(2) Will be deemed ineligible to participate in the FGP if, based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the payment guarantees issued by CCC.

§ 1493.250 Certifications required for program participation.

(a) When making the statement required by §§ 1493.220(a)(7), 1493.230(a)(9), or 1493.240(a)(6), each seller, U.S. financial institution and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

(5) The applicant does not have any outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13;

(6) The applicant is not controlled by a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (*e.g.,* a corporation is not controlled by an officer, director, or shareholder who owes such a debt); and

(7) The applicant does not control a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (*e.g.,* a corporation does not control a wholly-owned or partially-owned subsidiary which owes such a debt).

(b) *Additional certifications for U.S. and foreign financial institution applicants.* When making the statement required by § 1493.230(a)(9) or § 1493.240(a)(6), each U.S. and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and its principals are in compliance with all requirements, restrictions and guidelines as established by the applicant's regulators; and

(2) All U.S. operations of the applicant and its U.S. principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001 and the Foreign Corrupt Practices Act of 1977.

§ 1493.260 Application for payment guarantee.

(a) *Letter of interest.* Prior to submitting an initial application for a payment guarantee in accordance with paragraph (b) of this section, the seller may, solely at the seller's option, submit a letter of interest to CCC describing a transaction for which FGP coverage may be sought. The letter of interest must contain all of the information specified on the USDA Web site and must be accompanied by a completed preliminary environmental and social screening document. A letter of interest fee, which will be specified on the USDA Web site, must accompany the letter of interest. CCC will review the letter of interest and provide preliminary feedback to the seller on whether the transaction may be eligible for coverage under the FGP. However, CCC's determination whether to issue a payment guarantee will be based on the seller's applications submitted pursuant to paragraphs (b) and (d) of this section.

(b) *Initial application for payment guarantee.* A firm sales contract must exist before a seller may submit an initial application for a payment guarantee. An initial application for a payment guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site, and be accompanied by the application fee in accordance with § 1493.300(b). Each initial application for a payment guarantee must also include a completed Preliminary Environmental and Social Screening Document. If the seller previously submitted the screening document with a letter of interest, the seller is required to re-submit it with the initial application only if revisions are needed to the screening document. An initial application must identify the name and address of the seller and include the following information:

(1) Destination country.

(2) The name and address of the buyer. If the buyer is not physically located in the destination country, it must have a buyer's representative in the destination country taking receipt of the goods and services covered by the payment guarantee. If applicable, provide the name and address of the buyer's representative.

(3) The name and address of the party on whose request the letter of credit is issued, if other than the buyer.

(4) The name and address of the end-user of the goods or services, if other than the buyer.

(5) The seller's sales number pertinent to the application and a copy of the firm sales contract.

(6) A description (including location, *i.e.*, address, city, port, and/or GPS coordinates, if available) of the agriculture-related facility that will use the goods and/or services to be covered by the payment guarantee and an explanation of how the goods and/or services will be used to improve handling, marketing, processing, storage, or distribution of U.S. agricultural commodities. If the payment guarantee covers goods not intended for a specific facility, describe where the goods will be delivered in the destination country.

(7) List of all agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed by the proposed transaction after completion, and an explanation of why and how the facility or goods and/or services will specifically benefit exporters of U.S. agricultural commodities.

(8) Total value of the firm sales contract.

(9) A full description of each good to be covered by the payment guarantee. The goods specified in the seller's application for the payment guarantee must correspond with the description of the goods specified in the firm sales contract and the foreign financial institution letter of credit. The description must include each of the following:

(i) Brand name and model number;

(ii) Applicable 10-digit Harmonized System classification code;

(iii) Description of the good;

(iv) Country where the good was manufactured and from which the good will be exported;

(v) For U.S. goods, the value of imported components used in the U.S. good's manufacture. If requesting guarantee coverage of only the U.S. components in U.S. goods, provide the value of U.S. components;

(vi) For goods that are local costs, the name of the local supplier;

(vii) Quantity;

(viii) Value of the good; and

(ix) Incoterms (if the sale of the goods is based on Incoterms delivery).

(10) A full description of each U.S. service to be covered by the payment guarantee. The U.S. services specified in the seller's application for the payment guarantee must correspond with the description of the U.S. services specified in the firm sales contract and the foreign financial institution letter of credit. The description must include each of the following:

(i) Description of the U.S. service;

(ii) Supplier of the U.S. service;

(iii) Cost of the U.S. service; and

(iv) NAICS classification number.

(11) A description and date of performance (or timeframe of performance if the exact date is unknown) of each contractual event, as specified in the firm sales contract.

(12) Indication of whether a coverage waiver is requested in accordance with § 1493.290(f). If a coverage waiver is requested, the applicant must indicate the nature of the waiver requested per § 1493.290(f)(1) and provide the justification and explanation required by § 1493.290(f)(2).

(13) Name and location of the foreign financial institution issuing the letter of credit and, upon request by CCC, written evidence that the foreign financial institution has agreed to issue the letter of credit.

(14) The term length of the credit being extended and the intervals between principal payments for each contractual event under the payment guarantee.

(15) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing guarantees or financing to the seller or other competing sellers in connection with this sale, whether or not the goods or services are of U.S. origin or would otherwise qualify for a payment guarantee under this subpart. Copies of any documents relating to such arrangements must be provided.

(16) A statement of how this transaction may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the destination country. Include in the statement the share of any private sector ownership in the transaction.

(17) An estimate of how many U.S. persons will be or have been hired because of the firm sales contract and/or how many U.S. persons are required to fulfill the firm sales contract.

(18) FGP tracking number assigned to previously submitted letter of interest, if applicable.

(c) *Review of initial application.* (1) An initial application may receive conditional approval from CCC as submitted, be conditionally approved with modifications agreed to by the seller, or be rejected by CCC. CCC's review will include, but not be limited to, the following criteria:

(i) CCC will only consider an initial application in connection with a transaction that CCC determines will benefit primarily exports of U.S. agricultural commodities.

(ii) If, based upon a price review the unit sales price of any good and/or service(s) does not fall within the prevailing commercial market level ranges, as determined by CCC, the initial application will not be approved as submitted.

(iii) CCC will review the preliminary environmental and social screening document submitted by the seller and, if necessary, request additional information from the seller to determine whether the transaction could have potentially significant adverse environmental and/or social impacts. If CCC determines that a transaction may have such significant adverse impacts, the seller must submit an Environmental and Social Impact Assessment (ESIA) with the final application for the payment guarantee. Alternatively, CCC may reject an initial application for payment guarantee based on the screening document and any additional information provided by the seller.

(2) Once CCC indicates its approval of the initial application to the seller, the seller must submit a final application as specified in paragraph (d) of this section before CCC will make a final determination of whether to issue a payment guarantee.

(d) *Final application for payment guarantee.* Once CCC approves an initial application, CCC must receive the seller's final application for a payment guarantee within the timeframe specified by CCC. This timeframe will be a minimum of 30 calendar days. The final application for payment guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site and be accompanied by the full guarantee fee (less any previous letter of interest or initial application fees paid toward the payment guarantee) and the environmental and social impact assessment, if required by CCC. The final application must identify the name and address of the seller and include the following information:

(1) FGP tracking number assigned by CCC.

(2) Destination country.

(3) The name and address of the buyer.

(4) A description of each good and U.S. service, along with the value of the Good and Cost of the service, for which guarantee coverage is requested, based on CCC's feedback on the seller's initial application. If the seller is seeking guarantee coverage on only the U.S. components used in the assembly of U.S. goods, provide the value of the U.S. Components.

(5) Net contract value.

(6) Amount of the initial payment and evidence that the initial payment has been paid by the buyer to the seller.

(7) Description and value of any discounts and allowances.

(8) Value of approved local costs.

(9) Total FGP transaction value.

(10) Guaranteed value.

(11) Guarantee fee.

(12) The seller's statement, "All certifications set forth in § 1493.270 are hereby being made by the seller in this application" which, when included in the application by the seller, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.270 with respect to both the initial and final applications.

(e) *Public comment.* To provide the public opportunity to review and comment on the potential environmental and social impacts of a transaction, CCC will make available on its Web site a list of pending transactions for which an ESIA is required. Interested parties will have a minimum of 30 business days to request and provide input on an ESIA prior to CCC's final decision. CCC will not disclose any confidential business information associated with a transaction unless such disclosure is authorized by law.

(f) *Reporting.* The seller may be required to submit reports to CCC on a quarterly, biannual, or annual basis to allow CCC to monitor transactions in which there is a potential for negative environmental and/or social impact. Reporting frequency will be based on the extent of the transaction's impact and any mitigation required. CCC and the seller will agree upon any reporting requirements, including the elements of reporting and the frequency, prior to issuance of a payment guarantee.

(g) *Approval of final application.* A final application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the seller, or rejected by CCC. CCC shall have the right to request the seller to furnish any other information and documentation it deems pertinent to the evaluation of the seller's application. In the event that the final application is approved, the Director will cause a payment guarantee to be issued in favor of the seller. Such payment guarantee will become effective at the time specified in § 1493.290(b).

§ 1493.270 Certification requirements for obtaining payment guarantee.

By providing the statement in § 1493.260(d)(12), the seller is certifying that the information provided in the initial and final applications is true and correct and, further, that all requirements set forth in this section have been met. The seller will be required to provide further explanation or documentation with regard to final applications that do not include this statement. If the seller makes false certifications with respect to a payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke guarantee coverage for any goods not yet exported and services not yet performed and/or to commence legal action and/or administrative proceedings against the seller. The seller, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.260(d)(12), certifies that:

(a) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(b) At the time of submission of the final application for payment guarantee, the buyer does not appear as an excluded party on the SAM list;

(c) The seller is fully in compliance with the requirements of § 1493.320(b) for all existing payment guarantees issued to the seller or has requested and been granted an extension per § 1493.320(b)(3); and

(d) The information provided pursuant to § 1493.220 has not changed and the seller still meets all of the qualification requirements of § 1493.220.

§ 1493.280 Special requirements of the foreign financial institution letter of credit and the terms and conditions document, if applicable.

(a) *Permitted mechanisms to document special requirements.* (1) A foreign financial institution letter of credit is required in connection with the sale to which CCC's payment guarantee pertains.

(i) If the obligation to pay by the foreign financial institution is conditioned on shipment documentation, the letter of credit must stipulate presentation of at least one original clean on board bill of lading as a required document, unless:

(A) The seller, or a related company previously reported to CCC by the seller pursuant to 1493.220(a)(5), is named as the shipper on the clean, on-board bill of lading. If the seller or a related company is named the shipper on the bill of lading, the letter of credit may stipulate a copy or photocopy of an original, clean, on-board bill of lading; or

(B) The letter of credit stipulates presentation of electronic documents per paragraph (a)(1)(ii) of this section.

(ii) If the letter of credit will allow for presentation of electronic documents, the letter of credit must so stipulate.

(iii) If the obligation to pay by the foreign financial institution is conditioned on a contractual event requiring other than shipment documentation, the contractual event must be clearly stipulated in either the letter of credit or the terms and conditions document.

(2) The use of a terms and conditions document is optional. The terms and conditions document, if any, must be specifically identified and referred to in the foreign financial institution letter of credit.

(3) The special requirements in paragraph (b) of this section must be documented in one of the two following ways:

(i) The special requirements may be set forth in the foreign financial institution letter of credit as a special instruction from the foreign financial institution; or

(ii) The special requirements may be set forth in a separate terms and conditions document.

(b) *Special requirements.* The following provisions are required and must be documented in accordance with paragraph (a) of this section:

(1) The terms of the repayment obligation, including a specific promise by the foreign financial institution issuing the letter of credit to pay the repayment obligation;

(2) The following language: "In the event that the Commodity Credit Corporation ("CCC") is subrogated to the position of the obligee hereunder, this instrument shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws principles. In such case, any legal action or proceeding arising under this instrument will be brought exclusively in the U.S. District Court for the Southern District of New York or the U.S. District Court for the District of Columbia, as determined by CCC, and such parties hereby irrevocably consent to the personal jurisdiction and venue therein.";

(3) A provision permitting the holder of the payment guarantee to declare all or any part of the repayment obligation, including accrued interest, immediately due and payable, in the event a payment default occurs under the letter of credit

or, if applicable, the terms and conditions document; and

(4) Post default interest terms.

§ 1493.290 Terms and requirements of the payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the holder of the payment guarantee an amount not to exceed the guaranteed value, plus Eligible interest, in the event that the foreign financial institution fails to pay under the foreign financial institution letter of credit and, if applicable, the terms and conditions document. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee becomes effective on the Date(s) of Performance. For goods, the period of coverage will apply from the date on which interest begins to accrue, if earlier than the date of performance. The payment guarantee will apply to the period beginning with the Date(s) of Performance and will continue during the credit term specified in the payment guarantee or amendments thereto.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any program announcements and notices to participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date of performance.* The final allowable date of performance will be specified on the payment guarantee.

(e) *U.S. content test.* (1) Except as allowed under § 1493.290(f), CCC will issue a payment guarantee only if the following items collectively represent less than 50 percent of the sum of the net contract value and the value of approved local costs:

(i) The value of eligible non-U.S. goods; and

(ii) The value of imported components.

(2) Imported raw materials and basic manufactured items (such as iron, steel, nuts, bolts, etc.) which are processed, assembled or manufactured in the United States are automatically included in CCC's coverage and are not counted as imported components for the purpose of determining U.S. content.

(f) *Coverage waiver.* (1) The seller may request a coverage waiver for any of the following:

(i) To allow for guarantee coverage of non-U.S. goods; and/or

(ii) The U.S. content test, allowing for guarantee coverage of non-U.S. goods and imported components in U.S. goods in excess of the value permitted under the U.S. content test.

(2) To request a coverage waiver on one of the bases specified in paragraph (f)(1) of this section, the seller must submit with the initial application for a payment guarantee a justification of why the non-U.S. goods and/or imported components in U.S. goods are essential to the completion of the FGP transaction. This justification must be based on one of the following:

(i) The goods and/or components are no longer manufactured in or provided by the United States;

(ii) The use of U.S. goods and/or components is not cost effective; or

(iii) U.S. goods and/or components are not compatible with the existing infrastructure in the destination country.

(3) In determining whether to grant a coverage waiver, CCC will consider the following factors:

(i) Whether information obtained by CCC from industry sources, government agencies, or any other sources supports the justification provided by the seller;

(ii) Whether the non-U.S. goods (and/or imported components in U.S. goods) are essential to the completion of the transaction; and

(iii) Any other information CCC determines is relevant.

(g) *Certain transactions are ineligible for payment guarantees.* A transaction (or any portion thereof) is ineligible for payment guarantee coverage if at any time CCC determines that:

(1) The sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the transaction;

(2) The sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(3) The buyer is excluded or disqualified from participation in U.S. government programs;

(4) The goods, services, and/or facility being financed will not primarily benefit U.S. agricultural commodity exports;

(5) The sale is not an eligible export sale.

(h) *Certain contractual events are ineligible for payment guarantee coverage.* The following contractual events are ineligible for coverage under an FGP payment guarantee, except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such contractual events:

(1) Contractual events with a date of performance prior to the date of receipt by CCC of the seller's written initial application for a payment guarantee;

(2) Contractual events with a date of performance later than the final date of performance shown on the payment guarantee or any amendments thereof;

(3) Contractual events where the date of issuance of a foreign financial institution letter of credit is later than the date of performance; or

(4) Contractual events that have been guaranteed by CCC under another payment guarantee. If CCC determines that the contractual event has been guaranteed under multiple payment guarantees (or coverage has been requested under multiple payment guarantees), CCC will determine which payment guarantee (or application for payment guarantee), if any, corresponds to an eligible export sale.

(i) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the Director. Such additional terms, conditions or qualifications as stated in the payment guarantee are binding on the seller and the assignee.

(j) *Amendments to the firm sales contract.* Any amendments to the firm sales contract that impact contractual event(s) covered by the payment guarantee must be submitted to CCC for approval for coverage prior to the date of performance of the contractual event.

(k) *Amendments to the payment guarantee.* A request for an amendment of a payment guarantee may be submitted only by the seller, with the written concurrence of the assignee, if any, and must be accompanied by the revised firm sales contract, if applicable. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable program announcements and sufficient budget authority exists. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. CCC reserves the right to request additional information from the seller to justify the request and to charge a fee for amendments. Such fees will be announced and available on the USDA Web site. Any request to amend the foreign financial institution on the payment guarantee will require that the holder of the payment guarantee resubmit to CCC the certification in § 1493.310(c)(1)(i) or § 1493.330(d).

§ 1493.300 Fees.

(a) *Letter of interest fee.* A letter of interest fee, as specified on the USDA Web site, must be received by CCC before CCC will consider the seller's letter of interest.

(b) *Initial application fee.* An initial application fee, as specified on the USDA Web site, must be received by CCC before CCC will consider the seller's initial application for a payment guarantee.

(c) *Guarantee fee rates.* Guarantee fee rates will be based upon the length of the payment terms provided for in the firm sales contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors that CCC determines appropriate for consideration.

(d) *Calculation of guarantee fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(e) *Payment of guarantee fee.* The seller shall remit, with his final application, the full amount of the guarantee fee, less the previously paid letter of interest fee, if applicable, and the initial application fee. CCC will not issue a payment guarantee until the full amount of the guarantee fee has been received by CCC. The seller's wire transfer or check for the guarantee fee shall be made payable to CCC and be submitted in the manner specified on the USDA Web site.

(f) *Refunds of fees.* Letter of interest fees, initial application fees, and guarantee fees will ordinarily not be refundable unless the Director determines that such refund will be in the best interest of CCC.

§ 1493.310 Assignment of the payment guarantee.

(a) *Requirements for assignment.* The seller may assign the payment guarantee only to a U.S. financial institution approved for participation by CCC. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and, unless approved in advance by CCC, may not be:

(1) Made to one party acting for two or more parties; or

(2) Subject to further assignment.

(b) *CCC to receive notice of assignment of payment guarantee.* A notice of assignment signed by the parties thereto must be filed with CCC by the assignee in the manner specified on the USDA Web site. The name and address of the assignee must be included on the written notice of assignment. The notice of assignment should be received by CCC within 30 calendar days of the date of assignment.

(c) *Required certifications.* (1) The U.S. financial institution must include the following certifications on the notice of assignment: "I certify, that:

(i) [Name of Assignee] has verified that the foreign financial institution, at the time of submission of the notice of assignment, does not appear as an excluded party on the SAM list; and

(ii) To the best of my knowledge and belief, the information provided pursuant to § 1493.230 has not changed and [name of Assignee] still meets all of the qualification requirements of § 1493.230."

(2) If the assignee makes a false certification with respect to a payment guarantee, CCC may, in its sole discretion, in addition to any other action available as a matter of law, rescind and cancel the payment guarantee, reject the assignment of the payment guarantee, and/or commence legal action and/or administrative proceedings against the assignee.

(d) *Notice of ineligibility to receive assignment.* In cases where a U.S. financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this section, CCC will provide notice thereof to the U.S. financial institution and to the seller issued the payment guarantee.

(e) *Ineligibility of U.S. financial institutions to receive an assignment and proceeds.* A U.S. financial institution will be ineligible to receive an assignment of a payment guarantee or the proceeds payable under a payment guarantee if such U.S. financial institution:

(1) At the time of assignment of a payment guarantee, is not in compliance with all requirements of § 1493.230(a); or

(2) Is the branch, agency, or subsidiary of the foreign financial institution issuing the letter of credit; or

(3) Is owned or controlled by an entity that owns or controls the foreign financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign financial institution issuing the foreign financial institution letter of credit; or

(5) Is owned or controlled by the government of a foreign country and the payment guarantee has been issued in connection with sales of goods or services to buyers located in such foreign country.

(f) *Repurchase agreements.* (1) The holder of the payment guarantee may enter into a repurchase agreement, to which the following requirements apply:

(i) Any repurchase under a repurchase agreement by the holder of the payment guarantee must be for the entirety of outstanding balance under the associated repayment obligation;

(ii) In the event of default with respect to the repayment obligation subject to a repurchase agreement, the holder of the payment guarantee must immediately effect such repurchase; and

(iii) The holder of the payment guarantee must file all documentation required by §§ 1493.350 and 1493.360 in case of a default by the foreign financial institution under the payment guarantee.

(2) The holder of the payment guarantee shall, within five business days of execution of a transaction under the repurchase agreement, notify CCC of the transaction in writing in the manner specified on the USDA Web site. Such notification must include the following information:

(i) Name and address of the other party to the repurchase agreement;

(ii) A statement indicating whether the transaction executed under the repurchase agreement is for a fixed term or if it is terminable upon demand by either party. If fixed, provide the purchase date and the agreed upon date for repurchase. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: "[Name of holder of the payment guarantee] has entered into a repurchase agreement that meets the provisions of 7 CFR 1493.310(f)(1) and, prior to entering into this agreement, verified that [name of other party to the repurchase agreement] does not appear as an excluded party on the SAM list."

(3) Failure of the holder of the payment guarantee to comply with any of the provisions of § 1493.310(f) may result in CCC annulling coverage on the foreign financial institution letter of credit and Terms and Condition Document, if applicable, covered by the payment guarantee.

§ 1493.320 Evidence of performance.

(a) *Report of performance.* The seller is required to provide CCC an evidence of performance report for each contractual event occurring under the payment guarantee. This report must include the following information:

(1) Payment guarantee number;

(2) Evidence of performance report number (*e.g.*, Report 1, Report 2) reflecting the report's chronological order of submission under the particular payment guarantee;

(3) Date of performance;

(4) Seller's firm sales contract number;

(5) Detailed description of the contractual event. For goods, include the applicable 10-digit Harmonized System classification code and the quantity;

(6) Net contract value of the contractual event covered by the payment guarantee;

(7) Amount of initial payment corresponding to the contractual event;

(8) Description and value of discounts and allowances, if any;

(9) Value of approved local costs corresponding to the contractual event, if any;

(10) Total FGP transaction value;

(11) Guaranteed value of contractual event;

(12) The seller's statement, "All certifications set forth in § 1493.330 are hereby made by the seller in this evidence of performance" which, when included in the evidence of performance by the seller, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.330; and

(13) In addition to all of the above information, the final evidence of performance report for the payment guarantee must include the following:

(i) The statement "All contractual events under the payment guarantee have been completed."

(ii) A statement summarizing the total value of all contractual events covered under the payment guarantee (*i.e.*, the cumulative totals on all numbered reports).

(b) *Time limit for submission of evidence of performance.* (1) The seller must provide a written report to CCC in the manner specified on the USDA Web site within 30 calendar days from the date of performance.

(2) If at any time the seller determines that no contractual events are to occur under a payment guarantee, the seller is required to notify CCC in writing no later than the final date of performance specified on the payment guarantee by furnishing the payment guarantee number and stating "No contractual events will occur under the payment guarantee."

(3) Requests for an extension of the time limit for submitting an evidence of performance report must be submitted in writing by the seller to the Director and must include an explanation of why the extension is needed. An extension of the time limit may be granted if such extension is requested prior to the expiration of the time limit for filing and is determined by the Director to be in the best interests of CCC.

(c) *Failure to comply with time limits for submission.* CCC will not accept any new applications for payment guarantees from a seller under § 1493.260 until the seller is fully in compliance with the requirements of § 1493.320(b) for all existing payment guarantees issued to that seller or has requested and been granted an extension in accordance with § 1493.320(b)(3).

§ 1493.330 Certification requirements for the evidence of performance.

By providing the statement contained in § 1493.320(a)(12), the seller is certifying that the information provided in the evidence of performance report is true and correct and, further, that all requirements set forth in this section have been met. The seller will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the seller makes false certifications with respect to a payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any contractual events that have not yet occurred and/or to commence legal action and/or administrative proceedings against the seller. The seller, in submitting the evidence of performance and providing the statement set forth in § 1493.320(a)(12), certifies that:

(a) The specifications and/or quantity of the contractual event conform with the information contained in the seller's application for payment guarantee and firm sales contract, or if different, CCC has approved such changes;

(b) A foreign financial institution letter of credit has been opened in favor of the seller by the foreign financial institution shown on the payment guarantee to cover the dollar amount of the contractual event covered by the payment guarantee, less the initial payment and less discounts and allowances;

(c) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(d) If the seller has not assigned the payment guarantee to a U.S. financial institution, the seller has verified that the foreign financial institution, at the time of submission of the evidence of performance report, does not appear as an excluded party on the SAM list; and

(e) The information provided pursuant to §§ 1493.220 and 1493.260 has not changed (except as agreed to and amended by CCC) and the seller still meets all of the qualification requirements of § 1493.220.

§ 1493.340 Proof of entry.

(a) *Diversion.* The diversion of goods covered by an FGP payment guarantee to a destination country other than that shown on the payment guarantee is prohibited, unless expressly authorized in writing by the Director.

(b) *Records of proof of entry.* (1) Sellers must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the goods sold in connection with the FGP in the destination country. At the Director's request, the seller must submit to CCC records demonstrating proof of entry. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the destination country, by an agent or representative of the vessel or shipline that delivered the goods to the destination country, or by a private surveyor in the destination country, or other documentation deemed acceptable by the Director showing:

(i) That the good(s) entered the destination country;

(ii) The identification of the export carrier;

(iii) The quantity of the good(s);

(iv) A description of the good(s); and

(v) The date(s) and place(s) of unloading of the good(s) in the destination country.

(2) Where shipping documents (*e.g.*, bills of lading) clearly demonstrate that the goods were shipped to the destination country, proof of entry verification may be provided by the buyer.

§ 1493.350 Notice of default.

(a) *Notice of default.* If the foreign financial institution issuing the letter of credit fails to make payment pursuant to the terms of the letter of credit or the terms and conditions document, the holder of the payment guarantee must submit a notice of default to CCC as soon as possible, but not later than 5 business days after the date that payment was due from the foreign financial institution (the due date). A notice of default must be submitted in writing to CCC in the manner specified on the USDA Web site and must include the following information:

(1) Payment guarantee number;

(2) Name of the destination country as shown on the payment guarantee;

(3) Name of the defaulting foreign financial institution;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;

(6) Date of foreign financial institution's refusal to pay, if applicable;

(7) Reason for foreign financial institution's refusal to pay, if known, and copies of any correspondence with the foreign financial institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the holder of the payment guarantee fails to notify CCC of a default within 5 business days, CCC may deny the claim for that default.

(c) *Impact of a default on other existing payment guarantees.*

(1) In the event that a foreign financial institution defaults under a repayment obligation under this subpart or under 7 CFR 1493, subpart B, CCC may declare that such foreign financial institution is no longer eligible to provide additional Letters of Credit under the FGP. If CCC determines that such defaulting foreign financial institution is no longer eligible for the FGP, CCC shall provide written notice of such ineligibility to all sellers and assignees, if any, having payment guarantees covering transactions with respect to which the defaulting foreign financial institution is expected to issue a letter of credit. Receipt of written notice from CCC that a defaulting foreign financial institution is no longer eligible to provide additional Letters of Credit under the FGP shall constitute withdrawal of coverage of that foreign financial institution under all payment guarantees with respect to any letter of credit issued on or after the date of receipt of such written notice. CCC will not withdraw coverage of the defaulting foreign financial institution under any payment guarantee with respect to any letter of credit issued before the date of receipt of such written notice.

(2) If CCC withdraws coverage of the defaulting foreign financial institution, CCC will permit the seller (with concurrence of the assignee, if any) to utilize another approved foreign financial institution, and will consider other requested amendments to the payment guarantee, for the balance of the transaction covered by the payment guarantee. If no alternate foreign financial institution is identified to issue the letter of credit within 30 calendar days, CCC will cancel the payment guarantee and refund the seller's guarantee fees corresponding to any unutilized portion of the payment guarantee.

§ 1493.360 Claims for default.

(a) *Filing a claim.* A claim by the holder of the payment guarantee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the USDA Web site. The claim must include the following documents and information:

(1) An original cover letter signed by the holder of the payment guarantee and containing the following information:

(i) Payment guarantee number;

(ii) A description of:

(A) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the seller or the assignee prior to submission of the claim; and

(B) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(iii) The following certifications:

(A) A certification that the defaulted payment has not been received (or, alternatively, specifying the portion of the scheduled payment that has not been received), listing separately scheduled principal and ordinary interest;

(B) A certification of the amount of the defaulted payment, indicating separately the amounts for defaulted principal and ordinary interest;

(C) A certification that all documents submitted under paragraph (a)(3) of this section are true and correct copies; and

(D) A certification that all documents conforming with the requirements for payment under the foreign financial institution letter of credit have been submitted to the negotiating bank or directly to the foreign financial institution under such letter of credit.

(2) An original instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the holder of the payment guarantee to the amount of payment in default under the applicable sale. The instrument must reference the applicable foreign financial institution letter of credit and, if applicable, the terms and conditions document; and

(3) A copy of each of the following documents:

(i) The repayment schedule with due dates, principal amounts and ordinary interest rates for each installment (if the ordinary interest rates for future payments are unknown at the time of the claim for default is submitted, provide estimates of such rates);

(ii) (A) The foreign financial institution letter of credit securing the sale; and

(B) If applicable, the terms and conditions document;

(iii) For goods, depending upon the method of shipment, the ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the bill of lading and the entry certificate or similar document signed by an official of the destination country. If the transaction utilizes electronic bill(s) of lading (e-BL), a print-out of the e-BL from electronic system with an electronic signature is acceptable;

(iv) The seller's invoice. For shipment of goods, the invoice must show the applicable Incoterms;

(v) The evidence of performance report(s) previously submitted by the seller to CCC in conformity with the requirements of § 1493.320(a); and

(vi) If the defaulted payment was part of a transaction executed under a repurchase agreement, written evidence that the repurchase occurred as required under § 1493.310(f)(1)(ii).

(b) *Additional documents.* If a claim is denied by CCC, the holder of the payment guarantee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the holder of the payment guarantee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign financial institution to make scheduled installments on the same contractual event, the holder of the payment guarantee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1)(i), (a)(1)(ii), and (a)(1)(iii)(A) and (B) of this section; an instrument of subrogation as per paragraph (a)(2) of this section, and the date the original claim was filed with CCC.

(d) *Alternative satisfaction of payment guarantees.* CCC may establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

§ 1493.370 Payment for default.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.360, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable payment guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the letter of credit and, if applicable, the terms and conditions document. If CCC determines that it is liable to the holder of the payment guarantee, CCC will pay the holder of the payment guarantee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims submitted with respect to any payment guarantee, not including any CCC late interest Payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus Eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the seller or the assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the seller or the assignee); or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the value of the contractual event indicated in the evidence of performance, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the seller or the assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the seller or the assignee).

(c) *CCC late interest.* If CCC does not pay a claim within 15 business days of receiving the claim in good order, CCC late interest will accrue in favor of the holder of the payment guarantee beginning with the sixteenth business day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. CCC late interest will be paid on the guaranteed amount, as determined by paragraph (b) of this section, and will be calculated at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90 calendar days of the date CCC late interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(d) *Accelerated payments.* CCC will pay claims only on amounts not paid as scheduled. CCC will not pay claims for amounts due as a result of the claimant invoking an accelerated payment clause in the firm sales contract, the foreign financial institution letter of credit, the terms and conditions document (if applicable), or any obligation owed by the foreign financial institution to the holder of the payment guarantee that is related to the letter of credit issued in favor of the seller, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its option may declare up to the entire amount of the unpaid balance, plus accrued ordinary interest, in default, require the holder of the payment guarantee to invoke the acceleration provision in the foreign financial institution letter of credit or, if applicable, in the terms and conditions document, require submission of all claims documents specified in § 1493.360, and make payment to the holder of the payment guarantee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* If an assignee submits a claim for default pursuant to § 1493.360 and all documents submitted appear on their face to conform with the requirements of such section, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the seller of which the assignee has no knowledge.

§ 1493.380 Recovery of defaulted payments.

(a) *Notification.* Upon claim payment to the holder of the payment guarantee, CCC will notify the foreign financial institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies related to the obligation in default are recovered by the seller or the assignee from or on behalf of the defaulting party, the buyer, or any source whatsoever (excluding payments between CCC, the seller and the assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid by the seller and/or assignee to CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the seller or the assignee, such party will also owe to CCC interest from the date of recovery of such funds to the date of CCC's receipt of such funds. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the seller or the assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share if any, provided that the required information necessary for determining pro rata distribution has been furnished. If a required payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery, and interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries received by CCC from any source whatsoever that are related to the obligation in default will be allocated by CCC to the holder of the payment guarantee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default on the date the claim is paid by CCC. Once CCC has paid out a particular claim under a payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the payment guarantee until both CCC and the holder of the payment guarantee have been reimbursed in full.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, under the following circumstances the seller or the assignee will be liable to CCC for any amounts paid by CCC under the payment guarantee:

(1) The seller will be liable to CCC when and if it is determined by CCC that the seller has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the seller for the purpose of obtaining the payment guarantee or for fulfilling obligations under the FGP; and

(2) The assignee will be liable to CCC when and if it is determined by CCC that the assignee has engaged in fraud or otherwise violated program requirements.

(e) *Cooperation in recoveries.* Upon payment by CCC of a claim to the holder of the payment guarantee, the holder of the payment guarantee and the seller will cooperate with CCC to affect recoveries from the foreign financial institution and/or the buyer. Cooperation may include, but is not limited to, submission of documents to the foreign financial institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in § 1493.370(d); and other actions that do not increase the obligation of the holder of the payment guarantee or the seller under the payment guarantee.

§ 1493.385 Additional obligations and requirements.

(a) *Maintenance of records and access to premises, and responding to CCC inquiries.* For a period of five years after the date of expiration of the coverage of a payment guarantee, the seller and the assignee, if applicable, must maintain and make available all records and respond completely to all inquiries pertaining to sales and deliveries of and extension of credit for goods and services sold in connection with a payment guarantee, including those records generated and maintained by agents and related companies involved in special arrangements with the seller. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the seller and the assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the seller's, assignee's, agent's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the seller and the assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the seller in connection with the payment guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all sellers and U.S. and foreign financial institutions to review, and fully acquaint themselves with, all regulations, program announcements, and notices to participants relating to the FGP, as applicable. All sellers and U.S. and foreign financial institutions participating in the FGP are hereby on notice that they will be bound by this subpart and any terms contained in the payment guarantee and in applicable program announcements.

(c) *Submission of documents by principals.* All required submissions, including certifications, applications, reports, or requests (*i.e.*, requests for amendments), by sellers, assignees, or foreign financial institutions under this subpart must be signed by a principal of the seller, assignee, or foreign financial institution or their authorized designee(s). In cases where the designee is acting on behalf of the principal, the signature must be accompanied by wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority, and the name and title of the authorized person or officer. Further, the seller, assignee, or foreign financial institution must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by seller may lead to rescission of payment guarantee.* CCC may cancel a payment guarantee in the event that a seller makes a willful misstatement in the certifications in §§ 1493.270(a) and 1493.330(c) or if the seller fails to comply with the provisions of § 1493.340 or § 1493.385(a). However, notwithstanding the foregoing, CCC will not cancel its payment guarantee if it determines, in its sole discretion, that an assignee had no knowledge of the seller's misstatement or noncompliance at the time of assignment of the payment guarantee.

§ 1493.390 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the seller or the assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the FGP, this subpart, the applicable program announcements and notices to participants, or the payment guarantee.

(2) The seller or the assignee may seek reconsideration of a determination made by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the seller or the assignee of the determination. The seller or the assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the final documentary evidence submitted by the seller or the assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the seller or the assignee fails to request reconsideration of a determination by the Director within 30 calendar days of the date of the determination, then the determination of the Director will be deemed final.

(3) If the seller or the assignee requests reconsideration of a determination by the Director pursuant to subparagraph (a)(2) of this section, and the Director upholds the original determination, then the seller or the assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the seller or the assignee fails to appeal the Director's final determination within 30 calendar days, as provided in § 1493.390(b)(1), then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) A seller or assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal a final determination of the Director to the GSM. An appeal to the GSM must be made in writing and filed with the office of the GSM no later than 30 calendar days following the date of the final determination by the Director. If the seller or the assignee requests an administrative hearing in its appeal letter, it shall be entitled to a hearing before the GSM or the GSM's designee.

(2) If the seller or the assignee does not request an administrative hearing, the seller or the assignee must indicate in its appeal letter whether or not it will submit any additional written information or documentation for the GSM to consider in acting upon its appeal. This information or documentation must be submitted to the GSM within 30 calendar days of the date of the appeal letter to the GSM. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the seller or the assignee to the GSM.

(3) If the seller or the assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the seller or the assignee. This date will ordinarily be within 60 calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The seller or the assignee and/or its counsel may present any relevant testimony or documentary evidence to the GSM. A transcript of the hearing will not ordinarily be prepared unless the seller or the assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date of the hearing or the date of receipt of the transcript, if one is to be prepared.

(4) The decision of the GSM will be the final determination of CCC. The seller or the assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the seller or the assignee has violated the terms of this subpart or the payment guarantee by failing to comply with a determination made under this section, and the seller or the assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to exercise any remedies available to CCC under applicable law.

(d) *Seller's obligation to perform.* The seller will continue to have an obligation to perform pursuant to the provisions of these regulations and the terms of the payment guarantee pending the conclusion of all procedures under this section.

§ 1493.395 Miscellaneous provisions.

(a) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(b) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0551–0032.

Dated: April 4, 2016.

Philip C. Karsting,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

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* **Editorial Note:** Proclamation number 9494 will not be used because a proclamation numbered 9494 appeared on the Public Inspection List on Friday September 16, 2016, but was withdrawn by the issuing agency before publication in the **Federal Register**.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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